SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 87

JULIAN BOND, ET AL., ETC., APPELLANTS,

vs.

JAMES "SLOPPY" FLOYD, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

(ATLANTA DIVISION)

Civil Action No. 9895

JULIAN BOND, DR. MARTIN LUTHER KING, JR., and MRS. AREL KEYES, for themselves, jointly and severally, and for all others similarly situated, Plaintiffs,

vs.

JAMES "SLOPPY" FLOYD, WILLIAM J. "BILL" LEE, ED T. FULFORD, J. TERRELL WEBB, W. JONES LANE, and DAVID L. NEWTON, individually and as members of the House of Representatives of the State of Georgia and as Representatives of the class of citizens who are presently serving as members of the House of Representatives of the State of Georgia; GEORGE T. SMITH, individually and as Speaker of the House of Representatives of the State of Georgia and as Chairman of the Rules Committee of the House of Representatives of the State of Georgia and as Chairman of the Challenge Committee appointed to consider the seating of Julian Bond; GLENN W. ELLARD, individually and as Clerk of the House of Representatives of the State of Georgia; MADDOX J. HALE, individually and as Speaker Pro-Tem of the House of Representatives of the State of Georgia; ELMORE C. THRASH, individually and as Messenger of the House of Representatives of the State of Georgia; DAVID PEEPLES, individually and as Doorkeeper of the House of Representatives of the State of Georgia; and BEN W. FORTSON, individually and as Secretary of State of the State of Georgia; and JACK TYSON, individually and as Sheriff of the House of Representatives of the State of Georgia, Defendants.

[File endorsement omitted]

[fol. 5]

COMPLAINT—Filed January 13, 1966

(1) This action arises under Article I, Section 10, Article IV, Section 4, the First, Fifth, Sixth, Thirteenth, Fifteenth and Nineteenth Amendments, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States and the following provisions of the United States Code; Title 42, §§1981, 1983, 1971(2). Jurisdiction is conferred on this Court by §§1331, 1343(3), 1343(4), 2201 and 2281, of Title 28, United States Code, and §§1983, 1971(2), and 1988 of Title 42, United States Code.

First Cause of Action

(2) The plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(a) (3) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the several rights of Negro citizens, male and female, to vote and to have members of their race represent them in the House of Representatives of the State of Georgia. Additional common questions of law and fact exist affecting the several rights of plaintiffs to have Negroes not systematically excluded from legislative representation in the State of Georgia. The members of the class are so numerous as to make it impracticable to bring them all before this Court. A common relief is sought. The interests of said class are adequately represented by plaintiffs.

[fol. 6] (3) Plaintiffs Julian Bond, Dr. Martin Luther King, Jr. and Mrs. Arel Keyes are Negro citizens of Fulton County, Georgia, House District Number 136, are registered voters and are over the age of twenty-one (21) years. Plaintiffs Julian Bond and Dr. Martin Luther King Jr. are men. Plaintiff Arel Keyes is a woman.

(4) The defendants James "Sloppy" Floyd, William J. (Bill) Lee, Ed T. Fulford, J. Terrell Webb, David L. New-

ton, and W. Jones Lane, are white males, over the age of twenty-one, are residents of the State of Georgia, and are duly elected and serving members of the House of Representatives of the State of Georgia. This action is brought against the aforenamed defendants individually and also as representatives of all other members of the House of Representatives of the State of Georgia, they being so numerous as to make it impractical to bring them all before the Court. The questions involved are common questions of law and fact.

The defendant George T. Smith is the duly elected and qualified Speaker of the House of Representatives of Georgia, and is the Chairman of the Rules Committee and also Chairman of the Special Committee created pursuant to House Resolution Number 7 which was appointed for the purpose of holding a hearing on petitions challenging and contesting the seating of Representative-elect Julian Bond of the 136th District ("Challenge Committee").

The defendant Glenn Ellard is the Clerk of the House of Representatives of Georgia.

[fol. 7] The defendant Maddox J. Hale is the Speaker Pro Tem of the House of Representatives of the State of Georgia.

Elmore C. Thrash is the Messenger of the House of Representatives of the State of Georgia.

The defendant David Peeples, is Doorkeeper of the House of Representatives of the State of Georgia.

The defendant Ben W. Fortson is the duly elected and qualified Secretary of State of the State of Georgia and as such is charged with the duty of issuing commissions to members of the House of Representatives of the State of Georgia.

(5) Each of the defendants is a resident of the State of Georgia. Defendant William J. (Bill) Lee resides in Clayton County, Georgia at RFD 1, Forest Park, Georgia. All of the defendants may be served at the State Capitol of the State of Georgia, Atlanta, Georgia.

(6) Plaintiff Julian Bond was on June 16, 1965 duly elected a member of the House of Representatives of the State of Georgia. The election held on that day was pursuant to an order of this Court in the case *Toombs* v. *Fortson* as was the special Democratic Primary election which was held May 5, 1965.

(7) Mr. Bond received the Democratic nomination for office running against one opponent who was also a member of the Negro race. Mr. Bond received 1,243 votes and his opponent, the Rev. Howard Creecy, Sr., received 522 votes. In the special election held on June 16, 1965 Mr. [fol. 8] Bond had Republican opposition. Again his opponent Malcolm J. Dean, was a member of the Negro race. Mr. Bond received 2,320 votes, Mr. Dean receiving 487 votes. Thus Mr. Bond received 82 per cent. of the votes cast in House District Number 136. There are approximately 6,500 registered voters in Mr. Bond's district. Of these approximately 6000 are members of the Negro race. Plaintiffs Dr. Martin Luther King, Jr. and Mrs. Arel Keyes are constituents of Julian Bond. Dr. King's voting residence was transferred to House District 136—which is where he resides—after June 16, 1965. Mrs. Keyes resided in House District 136 and voted in both the primary and general elections held on May 5 and June 16, 1965 and she cast her ballot on each occasion for Mr. Bond. Each of the plaintiffs and all members of their class are presently unrepresented in the House of Representatives of the State of Georgia.

(8) On Thursday, January 6, 1966, the Student Non-Violent Coordinating Committee of which Mr. Bond is a member and an employee issued a statement critical of American policy with respect to Viet Nam and with respect to the civil rights of Negroes in the United States. Mr. Bond stated that he concurred in that statement and he also stated that although he personally would not burn his draft card, he admired the courage of those who took such action knowing of the consequences which they faced. These statements

were widely reported in the Georgia press and, shortly [fol. 9] thereafter, several white members of the House of Representatives of the State of Georgia and other white politicians with strong segregationist beliefs and backgrounds publicly called for the House of Representatives to refuse to seat Mr. Bond.

(9) On Monday, January 10, 1965, the Secretary of State of the State of Georgia transmitted his certification that Mr. Bond was the duly elected Representative from House District 136 to the House of Representatives. Mr. Bond was, however, denied the right to take the oath of office. Five petitions contesting Representative-elect Bond's right to be seated were filed. He was tried under two such petitions, they being attached hereto as Exhibits A and B. The petitions were signed by 75 white members of the House of Representatives of the State of Georgia. Although Rule 198, Rules of the House of Representatives—attached hereto as a part of Exhibit E—requires contestants to retire from the House when the vote is taken on the contest, 74 of the 75 contestants remained and, in fact, voted on House Resolution 19 which deprived Representative-elect Bond of his seat. Although Defendants William J. "Bill" Lee, Ed T. Fulford and J. Terrell Webb signed petitions contesting the right of Representative-elect Bond to be seated, each of them served on the Special Committee, voted in favor of House Resolution 19 in the Committee, returned to the House itself and voted in favor of House Resolution 19.

[fol. 10] (10) A response to the Complaints was filed by Representative-elect Bond and is attached hereto as Exhibit C.

(11) The hearing before the Special Committee was held in the House Chamber and the members of the House themselves remained in their seats throughout the hearing. The proceedings were transcribed by a court reporter and are attached hereto as Exhibit D. As appears from the transcript of the proceedings, Representative-elect Bond was

tried solely for making statements prior to his being seated in and made a member of the House of Representatives of the State of Georgia.

(12) According to Exhibit A, a petition contesting the right of Representative-elect Bond to be seated, Mr. Bond was tried for treason and giving aid and comfort to the enemies of the United States, for violations of Title 50, Sections 462 (a) and 462 (b) United States Code (the Selective Service Act). He was tried under Article III, Section VII, Paragraph I of the Constitution of the State of Georgia which reads as follows:

> "Election, returns, etc.; disorderly conduct. Each House shall be the judge of the election, returns, and qualifications of its members and shall have power to punish them for disorderly behavior, or misconduct, by censure, fine, imprisonment, or expulsion; but no member shall be expelled, except by a vote of two-thirds of the House to which he belongs."

According to Exhibit B, a petition contesting the right of Representative-elect Bond to be seated, Mr. Bond was tried for not being able to take the oath of office required [fol. 11] by Article III, Section VII, Paragraph 1, which reads as follows:

> "I will support the Constitution of this State and of the United States, and on all questions and measures which may come before me, I will so conduct myself, as will, in my judgement, be most conducive to the interest and prosperity of this State."

(13) Defendant George T. Smith has publicly stated that the only method by which Representative-elect Bond could have been seated was to have apologized and come begging for his seat, and that it was doubtful that he could have been seated then.

(14) Plaintiffs and the class they represent aver that Article III, Section 7, paragraph 1 of the Constitution of the State of Georgia of 1945 is on its face unconstitutionally vague and is therefore void for vagueness under the First and Fourteenth Amendments of the Constitution of the United States.

Second Cause of Action

(15) Plaintiffs re-allege paragraphs one through thirteen inclusive in their entirety.

(16) Representative-elect Bond admittedly engaged in no "disorderly behavior or misconduct."

(17) Plaintiffs and the class they represent aver that Article III, Section 7, paragraph 1 of the Constitution of the State of Georgia was unconstitutionally administered against Representative-elect Bond in violation of the First and Fourteenth Amendments of the Constitution of the [fol. 12] United States.

Third Cause of Action

(18) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(19) Rule 61 of the House of Representatives is on its face unconstitutionally vague and is therefore void for vagueness under the First and Fourteenth Amendments of the Constitution of the United States.

Fourth Cause of Action

(20) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(21) Rule 61 of the House of Representatives was unconstitutionally administered against Representative-elect Bond in violation of the First and Fourteenth Amendments of the Constitution of the United States.

Fifth Cause of Action

(22) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(23) House Resolution 19 is unconstitutional in its application to Representative-elect Bond in that it deprived him of rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States and it injured the class of plaintiffs here represented by depriving them of their right to representation in the House [fol. 13] of Representatives in violation of the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth and Nineteenth Amendments of the Constitution of the United States.

Sixth Cause of Action

(24) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(25) The oath of office required by Article III, Section IV, paragraph 5 is unconstitutionally vague and therefore void under the First and Fourteenth Amendments of the Constitution of the United States in that said oath requires a person to "so conduct himself" as will "in his" judgement, be most conducive to the interest and prosperity of this State" and, Representative-elect Bond stated that he was and is ready, willing and able to take the oath yet was denied his seat there.

[fol. 14] Seventh Cause of Action

(26) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(27) The defendants' refusal to seat the plaintiff Julian Bond denies to the plaintiffs and the class they represent a Republican form of government, as guaranteed them by Article IV, Section 4 of the Constitution of the United States, since the 136th District is, and the voters therein

are, and must remain, unrepresented in the 1966 General Assembly.

Eighth Cause of Action

(28) Plaintiffs re-allege paragraphs one through thirteen inclusive in their entirety.

(29) House Resolution 19 refusing to seat the plaintiff Julian Bond is a bill of attainder in violation of the provisions of Article I, Section 10 of the Constitution of the United States, since it imposes punishment (deprivation of office) upon a named individual by legislative act. Further, since Bond was punished for an action taken by him at a time when it was proscribed by no law, House Rule 19 was an ex post facto law.

[fol. 15] Ninth Cause of Action

(30) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(31) The whole proceeding (see especially pages 59 and 82 of the Transcript) amounted to a trial for infamous crimes without presentment or indictment by a Grand Jury, as guaranteed by the Fifth Amendment to the Constitution of the United States.

Tenth Cause of Action

(32) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(33) The whole proceeding (see especially pages 59 and 82 of the transcript) amounted to a denial of trial by an impartial jury as guaranteed by the Sixth Amendment to the Constitution of the United States, both because there was no jury, no right to compulsory process and because the plaintiff Bond's accusers were also his judges.

Eleventh Cause of Action

(34) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(35) The defendants' denial of the plaintiff Bond's seat pursuant to House Resolution 19 to the extent that it was because of his connection with and support of a policy of [fol. 16] a militant civil rights organization of which he was a member denied the said plaintiff the right of free assembly as guaranteed to him by the First Amendment to the Constitution of the United States and the privileges and immunities clause of the Fourteenth Amendment to the Constitution of the United States.

Twelfth Cause of Action

(36) Plaintiffs re-allege paragraphs one through 13 and sixteen inclusive in their entirety.

(37) The enactment by the defendants of House Rule 19 without evidence denies to the plaintiffs the protection of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Thirteenth Cause of Action

(38) Plaintiffs re-allege paragraphs one through thirteen and sixteen inclusive in their entirety.

(39) The defendants' enactment of House Rule 19 without legal cause therefor denies to the plaintiff Mrs. Arel Keyes her right to vote as guaranteed to her by the Nineteenth Amendment to the Constitution of the United States.

[fol. 17] (40) Plaintiffs further show that this is a proceeding wherein they seek a declaration of their rights pursuant to ¶ 2201 of Title 28, United States Code, in that the defendants, their officers, agents, servants, employees, or attorneys and those persons in active concert or participation with them, by refusing to seat Julian Bond in the

House of Representatives, to have the oath administered to him, to be allowed to fully participate in the processes of the House of Representatives on the grounds of his exercise of free speech rights, are violating Article I, Section 10, Article IV, Section 4, the First, Fifth, Sixth, Thirteenth, Fifteenth and Nineteenth Amendments, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

(41) There is between the parties an actual controversy as herein set forth. The plaintiffs and others similarly situated and affected on whose behalf this suit is brought, are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the acts herein complained of; they have no plain adequate or complete remedy to redress the wrongs and unlawful acts herein complained of, other than this action for a declaration of rights and an injunction; the amount of their damage is in excess of Ten Thousand Dollars; any other remedy to which plaintiffs and those similarly situated could be remitted would [fol. 18] be attended by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, cause further irreparable injury, damage and inconvenience to the plaintiffs and those similarly situated.

Wherefore, Premises Considered, on all causes of action, separately and severally, plaintiffs respectfully pray that this Court take jurisdiction of this case, that a special three-judge court be called to hear and determine this case as by law provided in 28 United States Code, ¶2281 et seq., that it issue a temporary restraining order or a preliminary injunction to be made permanent later against all named defendants, their officers, agents, servants, employees, or attorneys and those persons in active concert or participation with them; and plaintiffs further pray that the Court advance this case on the docket and order a speedy hearing thereof and upon such hearing adjudge, decree and declare the rights and legal relations of the parties hereto in order

that such declaration shall have the force and effect of a final judgment or decree; and plaintiffs further pray that the Court enter a judgment or decree declaring the practice, policy, custom, or usage of the defendants, their officers, agents, servants, employees or attorneys and those persons in active concert or participation with them, in excluding Julian Bond from membership in the House of Representatives of the State of Georgia and any and all of the [fol. 19] rights and privileges appertaining thereto, to be in violation of the laws and Constitution of the United States.

Plaintiffs further pray that the defendants, their agents, officers, servants, employees or attorneys and those persons in active concert or participation with them, be temporarily and permanently enjoined from excluding Julian Bond from membership in the House of Representatives of the State of Georgia and any and all of the rights and privileges appertaining thereto.

Plaintiffs further pray that this Court adjudge and declare Article III, Section IV and VII, Paragraphs III and V of the Constitution of the State of Georgia of 1945 and Rule 61 of the Rules of the House of Representatives of the State of Georgia and House Resolution 19 null and void on the grounds of their facial unconstitutionality and on the grounds of their application to Plaintiffs and the class they represent and the plaintiffs further pray that they have a preliminary and permanent injunction, enjoining the operation, enforcement, and execution of Article III, Sections VII and IV, Paragraphs III and V of the Constitution of the State of Georgia of 1945 and Rule 61 of the Rules of the House of Representatives of the State of Georgia and House Resolution 19 on the grounds of their facial uncon- [fol. 20] stitutionality and on the grounds of their application to Plaintiffs and the class they represent.

Respectfully submitted,

Howard Moore, Jr., 859½ Hunter St., NW, Atlanta, Georgia; Morris Brown, Healey Building, Atlanta, Georgia.

Of counsel:

Charles Morgan, Jr., 5 Forsyth Street, Atlanta, Georgia; Melvin L. Wulf, 156 Fifth Avenue, New York, New York.

[fol. 21] *Duly sworn to by Julian Bond, jurat omitted in printing.*

[fol. 22]

Exhibit A to Complaint

Petition

To: The Presiding Officer, House of Representatives, State of Georgia

Comes now the undersigned and respectfully show the following:

Count I

The Student Nonviolent Coordinating Committee, an organization and association of which Representative-Elect Julian Bond is a member, agent, and publicity director, has caused to be made certain statements concerning the position of the United States in the Viet Nam conflict, a copy thereof being attached hereto, marked Exhibit A and by reference made a part hereof, and the said Representative-Elect Julian Bond did publicly endorse, approve and confirm said statement.

Count II

Said representative-elect has said that he admires the courage of those persons who burn their draft cards.

1.

The actions and statements of said representative-elect show that he does not and will not support the Constitution of the United States and of the State of Georgia, as required by law (Constitution of Georgia, Article III, Section IV, Paragraph V (Code §2-1605)); Constitution of the United States, Article VI, Section 3.

2.

By said actions and statements, said representative-elect adheres to the enemies of the United States and of the State of Georgia, contrary to the Constitution of Georgia (Article I, Section II, Paragraph II) and of the United States (Article III, Section 3, Cl. 1).

3.

By said actions and statements, said representative-elect gives aid and comfort to the enemies of the United States and of the State of Georgia, contrary to the Constitution of Georgia (Article I, Section II, Paragraph II) and of the United States (Article III, Section 3, Cl. 1).

[fol. 23]

4.

Said actions and statements constitute a violation of the United States Code, Title 50, §462(a).

5.

Said actions and statements constitute a violation of the United States Code, Title 50, §462(b), as amended.

6.

The statements referred to above are reprehensible and are such as tend to bring discredit to and disrepect of the House of Representatives and constitute actions on the part of Representative-Elect Julian Bond sufficient to pre-

vent him from being seated as a member of the House of Representatives.

7.

Such actions and statements show that he is unqualified and ineligible to be a member of the House of Representatives.

8.

Article III, Section VII, Paragraph I of the Constitution of the State of Georgia reads as follows:

> "Election, returns, etc.; disorderly conduct. Each House shall be the judge of the election, returns, and qualifications of its members and shall have power to punish them for disorderly behavior, or misconduct, by censure, fine, imprisonment, or expulsion; but no member shall be expelled, except by a vote of two-thirds of the House to which he belongs."

Now, therefore, the undersigned petitioners challenge the right of Representative-Elect Julian Bond to be seated as a member of the House of Representatives and respectfully request that he not be allowed to take the oath of office as a member of the House of Representatives and that he not be seated as a member of the House of Representatives.

This 10th day of January, 1966.

* * * * * * *

[fol. 24] EXHIBIT A TO EXHIBIT A

The Student Nonviolent Coordinating Committee has a right and a responsibility to dissent with United States foreign policy on an issue when it sees fit. The Student Nonviolent Coordinating Committee now states its opposition to United States' involvement in Viet Nam on these grounds:

We believe the United States government has been deceptive in its claims of concern for freedom of the Vietnamese people, just as the government has been deceptive in claiming concern for the freedom of colored people in such other countries as the Dominican Republic, the Congo, South Africa, Rhodesia and in the United States itself.

We, the Student Nonviolent Coordinating Committee, have been involved in the black people's struggle for liberation and self-determination in this country for the past five years. Our work, particularly in the South, has taught us that the United States government has never guaranteed the freedom of oppressed citizens, and is not yet truly determined to end the rule of terror and oppression within its own borders.

We ourselves have often been victims of violence and confinement executed by United States government officials. We recall the numerous persons who have been murdered in the South because of their efforts to secure their civil and human rights, and whose murderers have been allowed to escape penalty for their crimes.

The murder of Samuel Young in Tuskegee, Ala., is no different than the murder of peasants in Viet Nam, for both Young and the Vietnamese sought, and are seeking, to secure the rights guaranteed them by law. In each case, the United States government bears a great part of the responsibility for these deaths.

Samuel Young was murdered because United States law is not being enforced. Vietnamese are murdered because the United States is pursuing an aggressive policy in violation of international law. The United States is no repecter of persons or law when such persons or laws run counter to its needs and desires.

We recall the indifference, suspicion and outright hostility with which our reports of violence have been met in the past by government officials.

[fol. 25] We know that for the most part, elections in this country, in the North as well as the South, are not free. We have seen that the 1965 Voting Rights Act and the 1964 Civil Rights Act have not yet been implemented with full federal power and sincerity.

We question, then, the ability and even the desire of the United States government to guarantee free elections abroad. We maintain that our country's cry of "preserve freedom in the world" is a hypocritical mask behind which it squashes liberation movements which are not bound, and refuse to be bound, by the expediencies of United States cold war policies.

We are in sympathy with, and support, the men in this country who are unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Viet Nam in the name of the "freedom" we find so false in this country.

We recoil with horror at the inconsistency of a supposedly "free" society where responsibility to lend oneself to military aggression. We take note of the fact that 60 per cent of the draftees from this country are Negroes called on to stifle the liberation of Viet Nam, to preserve a "democracy" which does not exist for them at home.

We ask, where is the draft for the freedom fight in the United States?

We therefore encourage those Americans who prefer to use their energy in building democratic forms within this country. We believe that work in the civil rights movement and with other human relations organizations is a valid alternative to the draft. We urge all Americans to seek this alternative, knowing full well that it may cost them lives—as painfully as in Viet Nam.

[fol. 26] EXHIBIT B TO COMPLAINT

CHALLENGE AND CONTEST TO THE SEATING AND SWEARING IN OF REPRESENTATIVE-ELECT JULIAN BOND OF THE 136th REPRESENTATIVE DISTRICT OF FULTON COUNTY, GEORGIA

TO THE HONORABLE GLEN ELLARD, CLERK OF THE HOUSE OF REPRESENTATIVES OF GEORGIA, AND TO THE HONORABLE GEORGE T. SMITH, SPEAKER OF THE HOUSE OF REPRESENTATIVES OF GEORGIA, AS SPEAKER, AND AS THE HOLDER OF THAT OFFICE UNTIL HIS SUCCESSOR IS ELECTED AND QUALIFIED:

We, the undersigned, duly and properly elected Members of the Georgia House of Representatives, do hereby challenge, contest, and object to one Julian Bond taking the oath as set forth in the Georgia Constitution, Article III, Section IV, Paragraph 5, as the Representative of the 136th Representative District of Fulton County in the Georgia House of Representatives, for the following reasons, to-wit:

(1) That the Constitution of Georgia, Article III, Section VII, Paragraph 1 provides that each House shall be the judge of the election, returns, and qualifications of its members.

(2) That the Constitution of Georgia, Article III, Section IV, Paragraph 5, specifically requires each senator and representative, before taking their seat, to take the following oath or affirmation, to-wit:

> "I will support the Constitution of this State and of the United States, and on all questions and measures which may come before me, I will so conduct myself, as will, in my judgement, be most conducive to the interest and prosperity of this State."

(3) That the said Julian Bond has specifically and publicly endorsed in full a policy statement of an organization known as the Student Non-Violent Coordinating Committee, which statement reads as follows:

"We are in sympathy with, and support, the men in this country who are unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Viet Nam in the name of the 'freedom' we find so false in this country. [fol. 27] "We recoil with horror at the inconsistency of a supposedly free society where responsibility to freedom is equated with the responsibility to lend oneself to military aggression. We take note of the fact that 16 percent of the draftees from this country are Negroes called on to stifle the liberation of Viet Nam, to reserve a 'democracy' which does not exist for them at home. . . .

"We, therefore, encourage those Americans who prefer to use their energy in building democratic forms within this country. We believe that work in the civil rights movement and with other human relations organizations is a valid alternative to the draft. We urge all Americans to seek this alternative, knowing full well that it may cost them their lives—as painfully as in Viet Nam."

(4) That the said Julian Bond is not qualified under the Constitution of Georgia to take the oath as a Member of the House of Representatives representing the 136th Representative District of Fulton County, Georgia, inasmuch as his full endorsement of the aforesaid policy statement of the Student Non-Violent Coordinating Committee is totally and completely repugnant to and inconsistent with the mandatory oath prescribed by the Constitution of Georgia for a Member of the House of Representatives to take before taking his seat.

(5) That the said Julian Bond cannot justly and honestly take the aforementioned mandatory constitutional oath which requires him to uphold the Constitution of the United States and the Constitution of Georgia, having endorsed the aforesaid subversive policy statement.

(6) That many of the undersigned elected Members of the House of Representatives of the State of Georgia are

continuing members, having been duly and properly elected to the House of Representatives prior to the reapportionment of said body, and having previously taken the oath required by law.

WHEREFORE, the undersigned do demand, request, and move that:

(a) The said Clerk of the House, the Honorable Glenn Ellard, upon organizing the said House of Representatives [fol. 28] as prescribed by the Constitution, do refuse to allow or permit the said Julian Bond from taking the oath as a Member of the House of Representatives of the State of Georgia, and from taking his seat until such time as the House becomes properly organized, and the matter in controversy be voted on by the House, or that the challenge and contest of the seating and taking of oath by the said Julian Bond be referred by the Speaker to an appropriate Committee of the House for a full hearing and investigation thereof and that said Committee findings be reported back to the House in writing, so that the House shall act thereon.

(b) That the Honorable George T. Smith, the Acting and subsisting Speaker of the House of Representatives, as a hold-over in that office until his successor is duly elected and qualified, and his successor, fail and refuse to allow said Julian Bond to take the oath prescribed by law or become seated as a Member of the Georgia House of Representatives until said House of Representatives have an opportunity to vote on the qualifications of said Julian Bond, or until the challenge and contest of qualifications of said Julian Bond be referred to an appropriate Committee of the House to hear and inquire into this challenge and said qualifications, and report its findings back in writing to the House, for said House to act thereon.

This Challenge and Contest filed and entered at 10:00 A.M., this the 10th day of January in the Year of OUR LORD NINETEEN HUNDRED AND SIXTY-SIX.

. . . . . .

[fol. 32] EXHIBIT C TO COMPLAINT

IN THE MATTER OF:

REPRESENTATIVE-ELECT JULIAN BOND, Respondent.

Response to challenges, contests and petitions filed in the House of Representatives, State of Georgia, on January 10, 1966.

1.

Respondent, Julian Bond, has in no way engaged in treason as is charged against him. In fact, he is a patriotic, dedicated and loyal American citizen. On November 26, 1965, President Lyndon Baines Johnson, through his Press Secretary, Bill D. Moyers, said Americans have a basic right to criticize America's policies abroad. This statement was made in reference to demonstrations against the war in Viet Nam. Julian Bond and all other representatives of the people of the United States have a positive duty to speak on all public questions and issues. Just as members of the United States House of Representatives and the United States Senate have criticized both the fact that we are in Viet Nam and the conduct of the war there, Julian Bond insists on his equal right of free expression.

2.

Respondent alleges that action to refuse to seat him or to seat him with censure is an effort as appears from the challenges, contests and petitions filed against him to deprive him of his right of free speech and free expression and of his rights of freedom of petition under the First Amendment of the Constitution of the United States and the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States and of the Constitution and laws of the State of Georgia of 1945 (Code Section 2-115).

3.

Respondent avers that the action proposed to be taken against him is based upon his membership in and employment by the Student Nonviolent Coordinating Committee, in violation of his rights of free assembly and association, as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

4.

Respondent is charged with violation of the criminal laws of the United States and criminal laws of the State [fol. 33] of Georgia and is, in effect, being subjected to a trial by a special committee of the House of Representatives, State of Georgia, and a trial by the House of Representatives, State of Georgia, for alleged violations of criminal laws and is thereby being deprived of the right to be proceeded against by indictment, as guaranteed by the Fifth Amendment, his right to a trial by jury as guaranteed by the Sixth Amendment and the rights of equal protection and due process of laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

5.

Respondent has in these proceedings no right to compulsory process for obtaining witnesses in his favor as is guaranteed him by the Sixth and Seventh Amendments of the Constitution of the United States and of the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States.

6.

Respondent has not engaged in disorderly behavior, disorderly conduct or misconduct and action taken against him in the total absence of proof is in violation of the due process of the Fourteenth Amendment of the Constitution of the United States.

7.

Respondent is willing to take the oath of affirmation required of members of the House of Representatives, State of Georgia, and is a resident citizen of the State of Georgia, House District 136, from which he was duly elected by the electors therein on June 16, 1965. The House of Representatives, State of Georgia, met at 10:00 a.m. and received a communication from the Secretary of State of Georgia transmitting and certifying the name of Julian Bond as the duly qualified representative of House District No. 136.

8.

Respondent has been deprived of his right to vote in the organization of the House of Representatives, State of Georgia, the organization of said House being thereby rendered invalid and said House's further acts will be void and of no effect under the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States and the Fifteenth Amendment of the Constitution of the United States in that petitioner and those he represents have been deprived of their right to vote.

9.

The House of Representatives of the State of Georgia was ordered reapportioned in the Case of *Toombs* v. *Fort-*
[fol. 34] *son,* House District No. 136 having been created thereby. To deprive Respondent of his seat in the House of Representatives, State of Georgia, thereby deprives the voters of House District 136 of representation in the House of Representatives, State of Georgia, in violation of the order of the Court in *Toombs* v. *Fortson* and in violation of the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States and the Fifteenth Amendment of the Constitution of the United States.

10.

All these challenges, contests and petitions were unsworn and in no way verified.

11.

The Respondent objects to the procedures of the special committee of the House of Representatives, State of Georgia, and of the House of Representatives, State of Georgia, in that a simple majority vote rather than a two-thirds vote is to be employed to determine his qualifications and eligibility to serve as a member of the House of Representatives, State of Georgia, in violation of due process clauses of the Fourteenth Amendment of the Constitution of the United States, and in violation of Title 2, Georgia Code Annotated, Section 1901 of the Constitution of the State of Georgia of 1945.

12.

The challenges, contests and petitions against Representative-Elect Julian Bond, Respondent, are racially based and racially motivated, or based upon Respondent's associations and statements regarding racial matters, and are thereby in violation of the First Amendment of the Constitution of the United States, the Thirteenth Amendment of the Constitution of the United States, the Fourteenth Amendment of the Constitution of the United States and the equal protection and due process clauses thereof and the Fifteenth Amendment of the Constitution of the United States.

13.

That the honorable Glenn Ellard, Clerk of the House of Representatives of the State of Georgia, as ex-officio Presiding Officer of said House, had no authority at law or under the rules of the House to demand, instruct or request Representative-Elect Julian Bond to stand aside and not

take the oath required by law or members of the House of Representative, State of Georgia. Said Clerk's authority under law and by rule is limited solely to organizational matters and not to issues relating to elections, returns and qualifications for members.

[fol. 35] 14.

That at the time each of said challenges, contests and petitions were filed and lodged with the House of Representatives, State of Georgia, none of the persons signing said pleadings were then duly constituted members of the House of Representatives, and thus were without authority or capacity at said time and place to file or make challenge of Respondent's eligibility and qualification to take his oath of office.

WHEREFORE, premises considered, Respondent hereby respectfully requests that all challenges, contests and petitions be dismissed, quashed and that the special committee of the House of Representatives, State of Georgia and the House of Representatives of the State of Georgia take all actions and steps necessary to have the oath administered to him and have him seated as the duly elected representative of House District 136 of the State of Georgia.

This 10th day of January, 1966.

/s/ HOWARD MOORE, JR.
/s/ CHARLES MORGAN, JR.
For the Respondent

[fol. 37] EXHIBIT E TO COMPLAINT

Rule 61. Each House shall be the judge of the election, returns, and qualifications of its members and shall have power to punish them for disorderly behavior, or misconduct, by censure, fine, imprisonment, or expulsion; but no

member shall be expelled, except by a vote of two-thirds of the House to which he belongs.

(Ga. Const., art. III, sec. VII, par. I.)

* * * * * * *

[fol. 38] EXHIBIT F TO COMPLAINT

H.R. No. 19

By Messrs. Smith of the 90th and Wiggins of the 32nd

A RESOLUTION

Relative to the matter of the seating of Representative-Elect Julian Bond; and for other purposes.

WHEREAS, a special committee created pursuant to H.R. No. 7 which was appointed for the purpose of holding a hearing on petitions challenging and contesting the seating of Representative-Elect Julian Bond of the 136th District has conducted a hearing in said matter; and

WHEREAS, said committtee has submitted a report in which it is recommended that Representative-Elect Julian Bond not be allowed to take the oath of office as a Representative of the House of Representatives and that he not be seated as a member of the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that the report of the aforesaid committee is hereby adopted and the recommendations contained therein shall be followed.

BE IT FURTHER RESOLVED that Representative-Elect Julian Bond shall not be allowed to take the oath of office as a member of the House of Representatives and that Representative-Elect Julian Bond shall not be seated as a mem-
[fol. 39] ber of the House of Representatives.

BE IT FURTHER RESOLVED that the Clerk of the House is hereby instructed to immediately transmit a copy of the

aforesaid report and a copy of this resolution to the Governor, to the Secretary of State and to Representative-Elect Julian Bond.

In House

Read and Adopted January 10, 1966

[fol. 41]

Exhibit H to Complaint

Text of Request Made for Adjournment

January 12, 1966

Hon. Carl Sanders, Governor of the State of Georgia

Hon. Peter Zack Geer, Lt. Governor of the State of Georgia

Hon. George T. Smith, Speaker of the House of Representatives

Gentlemen:

We hereby call upon you to take all steps necessary to adjourn The House of Representatives of the State of Georgia until such time as the people of the 136th House District have a Representative there. The House of Representatives should not be reconvened until a special election has been held. Otherwise, 6500 voters—including a Nobel Peace Prize winner—will be deprived of their right to representation in the Georgia House of Representatives.

We call to your attention Article III, paragraph 3, Constitution of the State of Georgia, 1945, which provides for an adjournment by majority vote of the members of the House of Representatives and the Senate.

This request is made on behalf of Julian Bond.

Howard Moore
Charles Morgan, Jr.
Morris Brown

[fol. 64]

EXHIBIT D TO COMPLAINT

BEFORE THE SPECIAL COMMITTEE OF THE HOUSE OF REPRESENTATIVES

9895

In the Matter of:

JULIAN BOND, Respondent.

Transcript of the proceedings heard before the Special Committee of The House of Representatives, THE HONORABLE GEORGE T. SMITH, Chairman, in the House Chambers, State Capitol Building, Atlanta, Georgia, commencing at 2:30 o'clock p.m., January 10, 1966.

[Stamp]
FILED IN CLERK'S OFFICE
JANUARY 13 1966
CLAUDE L. GOZA, Clerk
By /s/ S. J. TIDWELL, Deputy Clerk

• • • • • • •

[fol. 68] PROCEEDINGS

The Chairman: Ladies and Gentlemen, this is an open hearing to everybody as long as it stays orderly. If it gets disorderly, too much noise or anything takes place out of the ordinary, the House Chamber will be cleared of everybody except the Committee and the news media.

If there is anyone in the press box that does not have a valid press pass to the press box, he will be asked to vacate the press box in order that those who do have valid passes to the press box can have a seat. I will let the press take care of that from here on out, unless they get in a fight.

The Committee, the Special Committee that is hearing this protest, if you have not moved down to the front,

please do so. I would ask the members that have seats down on the front, particularly in the front on the right and left immediately in the front and to the right here, to please vacate your seats and let some member of the Special Committee hearing this sit there, because we want them close, when this can be done.

I am going to request that no photographers, newsmen or tv-men be on the floor unless they are in the bullpens, one of the two down here on the left. Please do not come out of any of those places to take pictures, or otherwise converse with anybody in the assembly until the hearing is over with, please.

[fol. 69] (Whereupon, there was a short pause.)

The Chairman: Ready, Mr. Morgan? Ready, Mr. Groover?

The House will come to order.

This Committee is about to begin the hearing, and I wish to repeat again: Let's have no demonstrations, no outbursts. We must have order, and at any instant there is any disorder, the gallery in this House will be cleared and nobody will be allowed in this hearing but the press, the news media, the Committee, and the parties at interest.

To start off with, the burden is on the Protestant to prove the allegations of his petition. Secondly, in the Committee, the protestor will have the opening and conclusion, and in the Committee, there will be a limit of 30 minutes to each side in the opening and conclusion.

The Chair recognizes the gentleman from Richmond, Mr. Hull.

Rep. Hull: Mr. Speaker, I didn't ask to sit on this Committee. This, to me, is a very important function we have to perform, and I would like to ask if the Speaker has considered Rule 62, because it is my opinion if we have a written statement as to exactly what Mr. Bond did say, and what his intentions were behind his saying it—

The Chairman: Has each member of the Committee been handed a copy of the petition yet?

[fol. 70] Rep. Wiggins: Yes.

Rep. Hull: The petition, yes, but as an individual member serving on this very important committee, I would like to ask Mr. Bond, his counsel, or however you get the proper inquiry, as to whether he would have any objection to putting in affidavit form, under oath, as to what he did actually say, and his intentions behind his statement.

The Chairman: I think that would be a proper question after both sides have presented their cause. And any committee member wishing to make any request or questions of Mr. Bond, I will allow that at that time, but at this time, I think your question is out of order.

Rep. Hull: Can I ask one other thing? Is it in order, Mr. Chairman, that Rule 62 be read by the Clerk or the Secretary of the Committee?

The Chairman: The only trouble is that Mr. Bond is not a member of the House of Representatives yet.

Rep. Hull: Are you ruling me out of order?

The Chairman: No, I am just saying that Mr. Bond is not a member of the House of Representatives. That rule applies only to members of the House of Representatives, and he is not a member yet.

Rep. Hull: Isn't the very subject matter of what we are trying to decide through this committee the substance of what Mr. Bond said, and the intentions behind what he said?

[fol. 71] The Chairman: That's right, but it was said before he was a member of this House of Representatives; therefore, this rule would not apply to him because he is not a member of the House of Representatives.

Rep. Hull: Mr. Chairman, I hate to belabor this, and I know everybody has been waiting, but as a member of the Committee, I would like to ask if it would be proper to inquire of Mr. Bond's counsel as to whether he would have an objection to putting in affidavit form what he did say and his intentions behind the statement.

The Chairman: This time, I am going to rule that request out of order, because at the proper time in this proceeding, you will get a chance to ask that very question, and perhaps without even having to ask it.

At this time, does every member of the Committee have a copy of the proceedings?

First, I want to ask the Clerk or the Secretary of the Committee to call the roll of the Committee to see how many members of the Committee are here and who is absent.

• • • • • • •

[fol. 73] Rep. Wiggins: Mr. Chairman, all the members are present.

[fol. 74] The Chairman: Thank you.

Now, it has been agreed between the parties that Exhibit A and Exhibit B of Petition A and Petition B, which will be the ones that the cause will be heard upon.

A Member: Mr. Chairman?

The Chairman: Yes, sir.

A Member: I don't think that the members of the Committee have had theirs lettered A, B, C, D, and E, and I think it is going to be necessary.

The Chairman: Look at the top of one marked, "Petition to the Presiding Officer of the House of Representatives, State of Georgia, Comes now the undersigned and respectfully shows the following," and you have got Count One and Count Two. That is Petition A, and it has an Exhibit A on it.

And then Petition B is "Challenge and contest of the seating and swearing in of Representative-Elect Julian Bond of the 136th Representative District of Fulton County, Georgia. That is Petition B.

Now, those are the two that the cause will be heard upon. Now, there are three other petitions, Petition C, Petition D, and Petition E, which are being withdrawn and will not be heard upon, and a copy of them will be given to the Court Reporter to be made a part of the record of the case.

Someone hand these to the Court Reporter, please.

[fol. 75] Mr. Groover, you may proceed.

Mr. Groover: Mr. Speaker, Mr. Chairman, Gentlemen of the House, I appear here on behalf, as counsel on behalf

of Mr. Jones Lane and the other members signing the two petitions, which are presented to you as the Petitions A and Petition B, in which, in summary, it is charged that the Respondent, Mr. Bond, should not be seated in the House of Representatives because of statements made by him which reflect upon his ability to take the oath required by the Constitution of the State of Georgia.

Outlined in the petitions are the statements which are referred to, and the statements which it contends demonstrate that he is not able to subscribe to the oath required by the Constitution, which reads as follows:

> "I will support the Constitution of this State, and of the United States, and on all questions and measures which may come before me, I will so conduct myself as will in my judgment be most conducive to the interest and prosperity of this State."

Now, Mr. Speaker, with that brief outline, Mr. Chairman, with that brief outline, I would like to call, for the purpose of cross-examination, the applicant for membership in the House, Mr. Julian Bond.

The Chairman: Mr. Groover, I am going to allow the Respondent to outline his case briefly, and then you can call [fol. 76] him.

Mr. Moore, Mr. Howard Moore, one of the attorneys for the Respondent; Mr. Charles Morgan is the other one.

Mr. Moore: Mr. Speaker and Members of the Rules Committee, Special Committee, I represent Julian Bond, a citizen of the United States, a citizen of Georgia, resident of Fulton County.

I represent Julian Bond, who was elected by an overwhelming majority of the voters in his district on June 16th, 1965. The Secretary of State has made his return certifying that Mr. Bond is a duly elected representative from the 136th District.

The matter that is before you does not relate to any issue of his qualifications as to citizenship, or as to his being a bona fide candidate and elected Representative; and no

issue is before you as to propriety or legality of the election. The issues which relate, and which are before you deal exclusively with and solely with his right as a citizen, a private citizen to endorse a statement and to express his views on the policy of the United States' Administration of President Johnson, now in office, relating to the conduct and propriety of the war in Viet Nam.

It so happens that Mr. Bond's views on this particular issue are different, perhaps, than the views of many people in the State of Georgia and certainly throughout the [fol. 77] United States. At least, that seems to be the common understanding, and there are no other issues in this petition, or that will be heard before you this afternoon, except the issues relating to Mr. Bond's right to make a statement, his right of dissent.

It seems that the important inquiry is going to be, what did he say, and what was his intention behind saying it. Our viewpoint is that it is an irrelevant matter, that he had the right to make such statement, but you gentlemen here insist, or some gentlemen, Members of this House of Representatives, insist that you have a right to inquire into that matter.

We feel that when you make that inquiry, you will find that Mr. Bond has no un-American attitude, that he has an attitude that is consistent with the traditions, the finest traditions of free speech and dissent in this Country and in England, from which we got most of our common law.

We contend in our response, which you have been given a copy of, Mr. Bond has not engaged in any treasonable activities. As a matter of fact, we contend that his position is consistent with that of the President of the United States. You have our petition and our allegations that we made before you. We also contend that the effort to censure him—

Rep. Hull: Mr. Speaker—

The Speaker: I am not going to let the gentleman be interrupted while he makes out his case, so let him go on and make out his case.

[fol. 78] Mr. Moore: We contend further that these proceedings punish him and harass him, in violation of his right to free speech, to exercise his free speech. We further contend that he is being prosecuted and accused of guilt by association because of his employment, the persons for whom he works.

We contend that there is no evidence of any un-American activities on the part of Mr. Bond. We contend that he has not violated any Federal or State Laws pertinent to this investigation. We contend further that he is being denied elementary due process. He does not have the right of compulsory process to bring in witnesses to testify on his behalf, to produce documents that may exculpate him.

We contend that he has engaged in no disorderly conduct that has brought disrepute and ill reputation to the House of Representatives of the State of Georgia.

We further contend that he is willing to take the oath of affirmation to uphold the Constitution of the United States and the Constitution of the State of Georgia; the very same oath that most of you, all of you took this morning. He was here, ready, willing and able to take that oath, but he was denied that right.

We further contend that the action of the Clerk of the House of Representatives, the ex-officio presiding officer, Mr. Ellard, was unauthorized by the laws of Georgia, in that the ex-officio presiding officer only has authority re-[fol. 79] lating to matters of organization, not any authority to ask a member to stand aside so that his oath cannot be administered, because that is a matter which relates to the composition of the house.

These are substantially what our contentions are. There are some matters in there that deal with the Federal court case which has resulted in the reapportionment of the House of Representatives and under which this present session is being held, and under which a mandate exists with respect to this present session. We think that this is the worst sort of witch hunt, or the worst sort of inquiry; and we pray that, in legal terms, that after full investiga-

tion has been made of this matter here this afternoon, that you will seat Mr. Bond and that you will repudiate and renounce the people who have insulted the dignity of the House of Representatives by causing, putting the House of Representatives in a position where this type of investigation has to be made.

We respectfully submit that Mr. Bond is entitled to his seat, that you are obligated to find that he is entitled to his seat, and that your only American duty consistent with your oath which you took this morning will be to seat him, that any other verdict contrary to that would be a verdict that is un-American indeed, and certainly unbecoming to the House of Representatives of the State of Georgia.

The Chairman: Are there some pleadings the committee doesn't have?

[fol. 80] Rep. Hull: Mr. Chairman, may I address the Chair?

I apologize to the gentleman. I thought we were on the House floor where everybody is interrupted from time to time, but be that as it may, excuse me, but I am trying to follow what the man is saying. I don't have a copy of his response, and I would like to have a copy of his response; nor do I have a copy of the statement he is supposed to have made, Mr. Bond.

Mr. Groover: I would like to call the Applicant, please.

The Speaker: Mr. Bond.

Mr. Groover: Mr. Chairman, as Chairman of the Legislative Special Committee, I would like the Chairman to administer the oath to the witness.

The Speaker: Any other witnesses in the room other than Mr. Bond? I would like to give them all at once.

Are these the only two witnesses in the room?

(Whereupon, those expecting to testify were duly sworn.)

Mr. Moore: There is no objection to the witnesses being in the room?

The Chairman: There has been none raised to the Chair. As no objection is raised to the Chair, we will let them stay in.

Whereupon,

[fol. 81] HORACE JULIAN BOND being called as a witness, having previously been duly sworn, was examined and testified as follows:

Cross examination.

By Mr. Groover:

Q. Would you state your name, please?

A. Horace Julian Bond.

Q. Are you the Horace Julian Bond to whom the protest has been filed with reference to this matter?

A. I am.

Q. I will ask you if you will, please, to examine Exhibit A to Petition A, which is a statement purportedly attributed to the Student Nonviolent Coordinating Committee.

A. I notice a mistake in it.

Q. Will you tell us what the mistake is?

A. It is the figure "60," should be "16."

Q. All right, sir, you obviously then are familiar with that statement?

A. Yes, I am.

Q. And how long have you been familiar with that statement?

A. Since Thursday afternoon.

Q. Did you participate in the draft of that statement?

A. No, I did not.

Q. After having seen that statement, did you make some statement relative to it?

[fol. 82] A. Yes, I did.

Q. Did you state that you concurred fully in that statement?

A. Yes, I did.

Q. Do you still concur fully in that statement?

A. Yes, sir, I do.

Q. Do you concur in all portions of that statement?

A. Yes, sir, I do.

Q. Without reservations?

A. Without reservation.

Q. Do you consider yourself a member, a duly member of the House of Representatives as of this moment?

A. Well, I have not taken my oath.

Q. Other than that, do you consider that you are being illegally deprived of your membership?

A. Well, I am not a lawyer. I don't know if I am qualified to answer that, sir.

Q. Well, whatever you consider yourself at this moment, did you consider yourself to have the same status immediately after the recess this morning of the House of Representatives, the same status as you have now, whatever your status is now?

Mr. Moore: I object to that. That is a multi-pronged question. If Mr. Groover is going to ask questions, he should ask one question at a time.

The Chairman: Mr. Groover, are you trying to ask Mr. Bond if he considers that he is in the same status now as [fol. 83] he was before the others were given the oath?

Mr. Groover: I asked him if he considered that whatever his status is now, that his status immediately prior—immediately subsequent to the recess of the House was the same as it is now.

The Witness: I am not sure I understand you, Mr. Groover.

Mr. Moore: We would call upon the Speaker of the House to make a ruling as to what his status was this morning. There has been no ruling on what his status has been.

Mr. Groover: My question was, whatever his status is now, if he, the witness, considers that he had the same status this morning.

The Chairman: I overrule the objection. The question may be answered.

The Witness: Let me make sure. You are asking me if I have now, or if I believe I have now the same status that I had at 10:00 o'clock this morning?

By Mr. Groover:

Q. Well, no, after the recess.

A. After the oath was administered to the other 204 members of the House?

Q. Yes.

A. I am not sure exactly what my status is, sir.

Q. After the recess this morning, did you reaffirm your [fol. 84] concurrence perfectly to the statement, Exhibit A, which you heretofore read?

A. Yes, I did.

Q. Now, I ask you, Mr. Bond, if you concurred in and support the following language:

> "We are in sympathy with and support the men in this country who are unwilling to respond to a military draft, which would compel them to contribute their lives to the United States' aggression in Viet Nam in the name of the Freedom which we find so false in this Country."

Do you concur in those words?

A. Mr. Groover, I support the statement in its entirety, and I think that one sentence follows another in it, and that one part has a connection to the other, but I agree with that statement.

Q. Do they express your views, Mr. Bond?

A. They do.

Q. The views that you had at the time of your public statement of concurrence and your present views?

A. They do.

Q. And do you apprehend that these are your continuing views?

The Chairman: What the continuing views are, they are out of order. What they are at the present time is all that we are worried about.

By Mr. Groover:

[fol. 85] Q. I will ask you this question, Mr. Bond. Have you stated publicly that you are in sympathy with those who burn their draft cards?

Mr. Moore: I object to that.

The Chairman: Is that a part of one of the allegations?

Mr. Moore: There is no allegation in the statement regarding the burning of draft cards.

The Chairman: If it is one of the allegations, I will allow the question.

Mr. Groover: It is not specifically alleged.

The Chairman: Which allegation are you talking about?

Mr. Groover: It says he cannot support the Constitution of the State of Georgia himself, as one of the grounds of the protest. It is in Count 2, paragraph 2.

The Chairman: I will overrule the objection and allow him to answer the question.

Mr. Moore: Mr. Speaker, response of the proponent to the objection was in fact non-responsive, because the question before him was whether or not Mr. Bond concurred with the statements alleged in Exhibit A, Petition A, to the effect that he believed that—that he agreed with people who burned their draft cards.

Mr. Groover: No, I asked him if he publicly stated that [fol. 86] he was in sympathy with persons who publicly burn their draft cards, that was the question.

The Chairman: I will overrule the objection and allow him to answer the question.

Rep. Alexander: Mr. Speaker, as a matter of procedure, it appears that we will have to limit the inquiries to the things which are stated in the petition, and it appears to me, Mr. Speaker, that inquiry into the burning of draft cards, when there is no allegation of fact, is a mere con-

clusion, and I don't think that we can take the time to go into all of these matters of conclusions.

The Chairman: Mr. Alexander, I think you are a member of the Committee. I think a member of the Committee would have to bring that up at the conclusion. I think your remarks are out of order at this time.

Under Count 2, they allege certain actions of his were a violation of the United States Code, United States Constitution, and I think under that allegation, questions of that, I will allow.

By Mr. Groover:

Q. First, I would like for the record to show that the first grammatical paragraph of Count 2, Mr. Chairman, I would like to show that the first grammatical paragraph under count 2 reads:

"Said Representative-Elect has said that he admires the [fol. 87] courage of those persons who burn their draft cards."

That is petition A.

The Chairman: I have already ruled that he could answer the question.

The Witness: I am sorry, could I ask you to repeat it?

Mr. Moore: The question isn't what is alleged in the paragraph. The question isn't what is alleged in the paragraph; what is alleged in the paragraph is that he admired the courage of persons who burn their draft cards. But what the proponent asked was whether or not he was sympathetic or admired persons who burn their draft cards, which is a different subject matter, which is not alleged in the petition and not raised.

By Mr. Groover:

Q. Do you admire the courage of persons who burn their draft cards?

A. I admire people who take an action, and I admire people who feel strongly enough about their convictions to take an action like that knowing the consequences that they will face, and that was my original statement when asked that question.

Q. Do you still adhere to that statement?

A. Yes, I do.

Q. Let me see if I have your statement correct, that you admire people who are willing to take the consequences, to [fol. 88] stand up for their principles, is that substantially what you said?

A. That is correct.

Q. And does that admiration of such people go to taking such a stand, when such a stand is in violation of a valid law of the United States?

A. I have never suggested or counseled or advocated that any one other person burn their draft card. In fact, I have mine in my pocket and will produce it if you wish. I do not advocate that people should break laws. What I simply try to say was that I admired the courage of someone who could act on his convictions knowing that he faces pretty stiff consequences.

Q. So that you admire the courage of the persons in the given instance who burn their draft cards, or who were willing to take the consequences for burning their draft cards?

A. That is right.

Q. Do you feel that such persons are justified under the Constitution of the United States—

Mr. Moore: I object—

Mr. Groover: May I finish the question.

The Chairman: All right, finish the question.

By Mr. Groover:

Q. Do you feel that under your interpretation of the Constitution of the United States, that persons are justi- [fol. 89] fied in defying, who exhibit their courage by defying a valid law of the United States?

Mr. Moore: Objection. There has been on interpretation of the Constitution put into evidence by this Representative.

The Chairman: Would you repeat that question, Mr. Groover?

Mr. Groover: I said that under his interpretation of the Constitution, does he admire the courage of a person and the right of a person to violate a valid law of the United States Code, burning a draft card.

The Chairman: I think he has already answered that question on two different occasions. Frankly, I just think he has answered the question, and I will sustain the objection, because I think he has answered it two different times.

Mr. Groover: All right, sir.

Rep. Hull: I am nothing but a member of the Committee, but what rules are we playing by? Can the members of the Committee ask a question?

The Chairman: The members of the Committee can ask a question after the protestant and respondent have finished with this particular witness. You just write your questions down now.

Mr. Richardson, over here?

Rep. Richardson: Mr. Chairman, I thought that at this [fol. 90] time, perhaps, for the Chair to remind both counsel that the procedure on which we are traveling, that you are chairman and are not ruling and acting as speaker of the House in session, because I think both counsel have asked you to rule as Speaker.

The Chairman: And you will notice I didn't rule.

You can continue.

Mr. Groover: Mr. Chairman, at this point I have some tapes I would like to set up and see if Mr. Bond could identify whether or not they are his voice or not.

The Chairman: Let both the Chairman and Mr. Bond understand what you propose to do. You propose to play a tape that purports to be Mr. Bond's voice, and you want to

know whether or not he will admit or deny that that is his voice and what he said?

Mr. Groover: That is correct.

Mr. Moore: We pose an objection to that. One, we request that it be done outside of the Committee; and two, we request that—We would object to the admissibility of such tape until it has been properly indicated. Until that time we would contend very strongly that the tape would be inappropriate and inadmissible in this hearing and highly prejudicial.

The Chairman: I am going to overrule the objection, pending the protestant proving, first of all, that this [fol. 91] evidence, that this tape that he is going to play was given free and voluntary to the press or some member of the press. If he can show that it was given in a press conference in response to a question, I am going to allow it.

If he can't prove that, I am going to disallow it.

Mr. Groover: Well, I think, Mr. Chairman, in fairness to him, I will get to that a little bit later because I would not want to prejudice his position before this Committee by playing it and having it already in their ears, and I think maybe the objection is well taken to that regard, and I will just withdraw the proffer, and that is all for this time.

The Chairman: You mean you rest now?

Mr. Groover: Of this witness.

The Chairman: You can go down, Mr. Bond, unless they have got another question.

Mr. Groover: That is all.

The Chairman: You can go down, Mr. Bond.

(Witness stepped down.)

The Chairman: Do you have another witness, Mr. Groover?

Mr. Groover: I would like the record to show, Mr. Chairman, that there were no requests issued for subpoenas

to the Chairman of this Committee, or to any other officer of this House of Representatives subsequent to its organization, or any other request for any form of compulsory process.

[fol. 92] The Chairman: The reporter will enter that up as a part of the record of the case.

Have you got any other witnesses?

Mr. Moore: May we have a response to that?

The Chairman: Yes, you have a statement.

Mr. Moore: We were advised that compulsory process was not available to these proceedings.

The Chairman: That is right, you were so advised.

Mr. Groover: Mr. Spivia.

The Chairman: Which gentleman do you want next?

Mr. Groover: Mr. Spivia.

The Chairman: Mr. Spivia.

Whereupon,

ED SPIVIA, being called as a witness, and having previously been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Groover:

Q. State your name, please.

A. Ed Spivia.

Q. What occupation, Mr. Spivia?

A. I am a newsman with WGST Radio.

Q. You took the oath a minute ago when the Chairman administered it?

A. Correct.

[fol. 93] Q. I will ask you, Mr. Spivia, if on today you had occasion to interview the applicant in this case, Mr. Julian Bond?

A. Today?

Q. Today.

A. I did.

Q. Where did that interview take place?

A. Outside the House Chambers in the hall.

Q. And can you give me the approximate time that that interview took place?

A. It was after the convening of the General Assembly, after which Mr. Bond walked out, I would say around 10:30.

Q. Prior to that had you taken, or had you had another interview with Mr. Bond?

A. Yes, I had.

Q. When did that take place?

A. Thursday, January 6th.

Q. I will ask you if you made a recording of those interviews?

A. Yes, I did.

Q. I will ask you if Mr. Bond at that time knew you were making a recording of those interviews?

A. Yes, he did.

Q. I will show you the two tapes and ask you if you can identify those tapes?

A. These are not the originals of the tapes. They are [fol. 94] recordings which have been unaltered.

Q. Did you make those, whatever you hold in your hands?

A. Yes.

Q. Do they correctly and without alteration depict or have on there what was said in those interviews?

A. Yes, they do.

Q. Has there been any alteration whatsoever?

A. No, there hasn't.

Q. Is that a record of the interview or a duplicate of the interview made with Mr. Bond on each of the occasions?

A. One is an interview of Mr. Bond on the telephone on Thursday the 6th. The other is an interview of Mr. Bond in the hallway today.

Q. And did he on each of those occasions know that you were making a recording?

A. Yes, he did.

Q. All right, sir.

Mr. Groover: Have we got that machine?

The Chairman: I have got a man hunting a machine. They misunderstood. They thought I asked for one to record something. I asked for one to play something.

Mr. Groover: In the interest of time, we will do that later. Do you have objection, Mr. Morgan, for us to go on and do that later to save time?

Mr. Morgan: I think we would like to know what the [fol. 95] case is against us before we proceed further.

The Chairman: Do you have any other witnesses?

Mr. Groover: No, sir, reserving the right—

I tendered them to him, and I thought he said he wanted to go on with the rest of the case before we proceed.

The Chairman: This is not the usual courtroom scene, so we won't get too technical about the way we do things around here.

You want to ask some questions, Mr. Moore?

Mr. Moore: Yes, sir.

Cross-examination.

By Mr. Moore:

Q. Mr. Spivia, is it Spivia?

A. Right.

Q. How long have you been employed with WGST?

A. Seven months.

Q. In what capacity are you employed with WGST?

A. As a news reporter.

Q. As news reporter what are your duties?

A. To gather the news and present it to our station for their presentation, and also to present the news on occasion.

Q. Do you have any responsibilities with respect to making tape recordings?

A. Yes, I do.

Q. What is that responsibility?

[fol. 96] A. It is my duty to take a tape recording of press conferences such as that one Mr. Bond held this morning,

and also it is my duty to record phone interviews such as that other recording of Mr. Bond on Thursday of last week.

Q. Do you have any duties with respect to making duplicate recordings from originals?

A. Yes, I do.

Q. What is that responsibility?

A. When I am called upon to make a duplicate of that, it is my responsibility to do so.

Q. Do you yourself make duplicates?

A. I do.

Q. Is there anyone else at WGST who makes duplicates?

A. All of the newsmen and the engineers are qualified and are requested at times to make duplicates.

Q. And who are they?

A. Ben Williams, Mike Jones, Dick Gray, Jim Pugh, Julian Clark, Mason Roberts, Norman Brooks, Johnny Murray.

Q. Which of them participated in making the duplicates of these interviews?

A. Dick Gray participated on one duplication process.

Q. Would you identify which one, please?

A. On the recording of Mr. Bond last Thursday.

Q. Go ahead.

A. That was the tape that Mr. Gray participated in the [fol. 97] duplication process on.

Q. Who assisted him, if anyone?

A. Myself and Mike Jones.

Q. What about the duplicate of the recording that allegedly was made this morning?

A. That was duplicated by Julian Clark.

Q. Did you participate in that?

A. I did not participate in the duplication, but I have heard the tape recording, and will testify that it is the recording of this morning's press conference.

Q. You were not present, however, at the time duplication was made?

A. I was not present at the time it was made, but I have listened to it and know that it is correct.

Q. You don't purport to testify before this Committee that you recorded everything that was said at the press conference this morning, do you?

A. I do recall the line of process, yes.

Q. I asked you, do you recall—

A. I don't recall everything, no, sir, I don't.

Q. So you don't know whether or not the duplicate recording tape is true, correct and complete, do you?

A. I believe strong enough that it is correct and has been unaltered to testify that it is correct.

Q. You base that solely on your belief?

[fol. 98] A. On my belief.

Q. Now, as to the recording that was made on Thursday, about what time was the recording made?

A. It was in the afternoon following the SNCC press conference. I don't know exactly what time it was.

Q. Did you call Mr. Bond?

A. I didn't call Mr. Bond. Another member of our staff did. I interviewed Mr. Bond on the phone at the time of the recording.

Q. What is the name of the person of your staff that interviewed Mr. Bond at the time of the recording?

A. The interview was made by myself and Dick Gray.

Q. Did Mr. Gray call Mr. Bond?

A. I assume he did, either Dick Gray or Mike Jones, one of the two, I don't know who placed the call.

Q. You don't know who placed the call?

A. It was either Dick Gray or Mike Jones.

Q. Did you yourself talk directly with the person on the other side of the line?

A. I did.

Q. You did?

A. Yes, sir.

Q. Did you identify yourself?

A. No, I did not.

Q. Did you at any time tell Mr. Bond that his statement [fol. 99] would be replayed?

A. I didn't tell Mr. Bond that. I am sure he was aware of it.

Q. But you have no personal knowledge that he was told or that he was aware of it?

A. No, I don't.

Q. Where did you work prior to coming to WGST?

A. In Sylva, North Carolina.

Q. Did you work in radio?

A. Yes, I did.

Q. How did you come to the attention of Mr. W. Jones Lane?

A. He called the station this morning and asked the station if we had a duplicate of the—or if we had the original tape of Mr. Bond's conversation on the phone with us last Thursday. The station management told him we did, that I had made the recording.

Q. You were not present at the time the conversation took place?

A. No, but he contacted me through that process.

Q. Do you know with whom he talked at the station?

A. No, I am not sure.

Q. And so you don't know whether or not he talked to the station manager or not?

A. I don't know whether he talked with the station manager. I know he talked with someone there.

[fol. 100] Q. Are you here on assignment?

A. Yes, I am.

Q. You are; are you a member of any groups that would be antagonistic to the Student Nonviolent Coordinating Committee?

A. No, sir, I am not.

Q. Of what groups are you a member?

A. I am a member of the National Jaycees and the Baptist Church.

(Applause.)

The Chairman: That's the first time I ever heard the Baptists applauded.

By Mr. Moore:

Q. The testimony which you have given here this far under oath relating to the recording to the press conference, the alleged press conference on Thursday—

A. No, there was no press conference on Thursday with Mr. Bond, that was a phone conversation.

Q. The alleged phone conversation with Mr. Bond on Thursday is all that you know about, the circumstances surrounding?

A. I was present at the SNCC press conference.

Q. I am talking about the telephonic interview that you allegedly had with Mr. Bond.

A. What about it?

The Witness: Mr. Speaker, I testified these statements are true.

[fol. 101] The Chairman: What was the last question?

The Witness: Do I have to stand up here the rest of the afternoon?

The Chairman: Your attorney ought to be protecting you, if you need any.

What was the last question?

Mr. Moore: The question I am asking is whether or not the matters to which he is testifying about thus far this afternoon are everything that he remembers about the telephonic conversation of Thursday, and the circumstances surrounding that telephonic conversation, allegedly with Mr. Bond.

The Speaker: I will let you answer that question.

The Witness: Would you state the question again. I don't understand it.

Mr. Moore: Would the reporter read the question back, please?

(Whereupon, the requested portion of the record was read back.)

The Witness: No, it isn't everything I remembered about it. There might be other things I remember, if you would like to ask me about them, okay.

By Mr. Moore:

Q. Mr. Spivia, do you know whether or not there is a law relating to having beepers on telephone conversations when they are recorded?

[fol. 102] A. I am not certain what this law is. I am aware that there is a law of that nature, or I think there is a law of that nature.

Q. You did not have a beeper, did you?

A. No, I did not.

Mr. Moore: No further questions.

The Speaker: You may go down.

(Witness stepped down.)

Mr. Moore: We move to exclude the so-called telephonic interview on Thursday with Mr. Bond on the grounds that, one, it violates the Federal Communications Act that requires that persons having an interview with a person over the telephone divulge the fact that he is going to release such a statement to third parties. This was a communication solely between Mr. Bond, if it was in fact between Mr. Bond, because there is no evidence that it was Mr. Bond who was on the phone. The witness who was on the stand testified that he himself did not call Mr. Bond. He does not know whether or not the number that was dialed, if the number in fact was dialed, was that of Mr. Bond. He also testified that he did not have exclusive control and possession of the tape recording, and the tape that was made therefrom. He has testified and put in evidence that persons other than himself had participated in the making of the duplicate tape recording, the duplicate tape.

We move to exclude on those grounds.

[fol. 103] Secondly, we move to exclude the telephonic statement—or pardon me, the tape of this morning on the

ground that the witness on the stand did not participate at all in making the duplicate tape, so that its reliability is in question and the proponent has the responsibility or the burden of establishing the reliability of the tape.

The Chairman: I overrule the objection.

You may continue, Mr. Groover.

Mr. Groover: Mr. Speaker, at this time, we would like to play the tapes in question.

The first tape to be played is the one on the Thursday, Mr. Spivia—

The Chairman: Please identify the tape for the Court Reporter.

Mr. Groover: This, Mr. Chariman, is the tape of the conversation on Thursday testified to by the witness:

(Whereupon, the indicated tape was played.)

Mr. Groover: Now, Mr. Chairman—

Mr. Moore: Mr. Chairman, I hate to be abrupt, but I would like to know if that tape will remain here so if any members of the Rules Committee—

The Chairman: All evidence will stay with the Committee.

Mr. Moore: Until the final—

The Chairman: It is completed, the whole hearing is [fol. 104] completed.

Mr. Moore: If they would like to have it played again?

The Chairman: Absolutely.

Mr. Groover: I tender that, Mr. Chairman, that tape just played, identified as the tape made on Thursday of last week, whatever date it was, as Protestant's Exhibit No. 1.

(Whereupon, Protestant's Exhibit No. 1 was tendered into evidence.)

Mr. Moore: Mr. Speaker—

The Chairman: Mr. Moore, I take it that you object to that evidence on the same grounds that you objected to it prior to its being played?

Mr. Moore: Right.

The Chairman: You want to renew your objections on that same ground?

Mr. Moore: Yes, sir.

The Chairman: Would the Court Reporter please note that he objected to it on the same ground as the objection that he raised prior to the playing of the tape.

Mr. Groover: Now, Mr. Chairman, we tender the tape, the playing of the tape, we tender as Protestant's Exhibit No. 2, the tape referred to by Mr. Spivia as having been made this morning.

[fol. 105] (Whereupon, Protestant's Exhibit No. 2 was tendered into evidence.)

The Chairman: Now, Mr. Moore, I take it that you are going to interpose the same objections to this tape that you did to the other one prior to its playing, is that correct?

Mr. Moore: That is correct.

The Chairman: The Court Reporter will so note, that he interposed the same objections to the playing of this tape that he interposed prior to the playing of the prior tape.

Mr. Groover: Well, excuse me, Mr. Chairman, it was my understanding that the only objection he interposed to this particular tape was that the—It has been testified as being a reproduction, and that the witness, Spivia, did not make the reproduction. I did not know that he had—I do not recall any other objections to that, to this particular tape.

The Chairman: What he did, he objected to both tapes, and by just interposing all of the objections to both tapes in the four different places, we will have the objection that he wants to all of them, and in each one apply the correct one without us trying to sift it out. That will cover the waterfront.

Rep. Alexander: A question of procedure, Mr. Chairman. [fol. 106] I understand members of the Committee are free to ask questions of each witness?

The Chairman: That's right, if you have a question you want to ask the witness.

Rep. Alexander: I have a question that I would like to ask relative to the tape that was just played.

The Chairman: Mr. Spivia?

Rep. Alexander: No, I would like to ask the counsel a question.

The Chairman: Address the question.

Rep. Alexander: I would like to know for the benefit of the Committee, exactly what point you hope to prove by playing the tape that you just played?

Mr. Groover: I hope to cover that in my discussion or summation to you of the matter, that the Applicant should be denied his seat. That is the point I am trying to make in everything I present.

Rep. Alexander: It may be somewhat lengthy. I wonder if you would state, just for the benefit of the Committee, what specifically in that tape that was just played is relevant to your argument and the issue before us?

Mr. Groover: Do you want me to argue my case now?

The Chariman: I don't want you to argue your case now. I am going to—Mr. Alexander, I think that in his summation that he will bring that point up. If he doesn't, I will [fol. 107] allow you to ask him the question again at the end of his summation, if he doesn't answer your question.

Rep. Alexander: I might say, Mr. Chairman, that I have several other questions, but I will hold them at the present time.

The Chairman: If a question hasn't been answered at the end of his summation,—The attorney doesn't answer them, or any of the witnesses, I will allow you to have them to come back.

Mr. Groover: I am delighted that he made that observation, for with that in mind, I will reserve some of my allotted time for Committee members to ask me questions.

The Chairman: Play the tape.

(Whereupon, the tape designated as Protestant's Exhibit No. 2 was played.)

The Chairman: And I take it again, Mr. Moore, you object to that evidence on the same ground that you objected to the first one before this one, and before the first one. Do you renew that objection?

Mr. Moore: Yes, sir, even though we think it is helpful to our case.

Mr. Groover: I take it that he doesn't want them to delete his speech of the others that is on the tape?

The Chairman: You offer it in evidence, is that right?

[fol. 108] Mr. Groover: Yes, sir, his and everybody else's.

The Chairman: It is admitted.

(Whereupon, Proponent's Exhibits 1 & 2, were admitted into evidence.)

Mr. Groover: Now, Mr. Chairman, I would like, for the purpose of the record, I think that this Committee can take judicial notice of it, to introduce into evidence, Section 50 of the United States Code 462 (a) and (b), having to do with the draft.

I would also, purely because of the following statement in the answer or the response: Paragraph 12 of the response reads:

> "The challenges, contests, and petitions against Representative-Elect Julian Bond, Respondent, are racially based and racially motivated; are based upon Respondent's association and statements regarding racial matters; and are thereby in violation of the First, the Thirteenth, the Fourteenth Amendments of the Constitution, the equal protection and due process clauses thereof, and the Fifteenth."

Paragraph 12 of the response, and solely, I want to emphasize that, Mr. Chairman, solely because of that statement in the response, I would like for the record to state,

to show that on today, seven persons other than Mr. Bond, [fol. 109] who were Negroes, presented themselves for the oath of office, and they had that oath of office duly administered.

I take it, Mr. Chairman, that as Speaker, you will confirm that that was a fact,

The Chairman: The reporter will so note.

Do you rest your case?

Mr. Groover: Furthermore, Mr. Chairman, I would like to show, I would like for the record to show that two members of this Special Committee are Negroes, duly elected and certified and sworn in, and with that, Mr. Chairman, we rest.

The Chairman: The Court Reporter will so note.

The Respondent will now be heard from.

Mr. Moore: The Respondent respectfully moves to strike and dismiss the petition seeking to withhold or deny him the right to take his seat, to take the oath, to be confirmed as a member on the grounds that the movant, proponent, has introduced absolutely no evidence, no evidence whatsoever showing any legal cause for Representative-Elect Julian Bond's not being permitted at this time to be sworn in by the House of Representatives and permitted to take his seat; that all the evidence shows that Mr. Bond has courageously exercised his right of free speech, about which Mr. W. Jones Lane, who is a member of the House of Representatives, and several others disagree.

[fol. 110] The Chairman: I deny the motion.

The Respondent will proceed.

Mr. Moore: The Respondent calls the Reverend Howard Creasy.

Mr. Chairman, would you administer the oath, please.

The Chairman: Reverend Creasy, will you hold up your right hand.

Whereupon,

HOWARD WILLIAM CREASY, being called as a witness, and after having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Moore:

Q. Would you state your name, please?

A. Howard William Creasy.

Q. Where do you live, sir?

A. At Ashby and Fair Streets, at 200 Ashby Street.

Q. What is your business or profession?

A. A minister.

Q. And where is your church located?

A. The Mount Moriah Baptist Church, at the corner of Ashby and Fair.

Q. Is that in the 136th House District?

A. It is, sir.

[fol. 111] Q. Do you live in the 136th House District?

A. I do, sir.

Q. How long have you been a minister?

A. About 25 years.

Q. And where have your pastorates been?

A. Louisiana, Alabama, and now Georgia.

Q. Were you a candidate in the Democratic Primary for election, for nomination rather, to House Seat 136?

A. I was.

Q. Do you know the Respondent, Julian Bond?

A. I do, sir.

Q. Did you meet him during the campaign?

A. I did.

Q. During the course of campaign, did you have an opportunity to form some opinion as to his character?

A. I did, sir.

Q. Is it your opinion that his character is such that he could be relied upon?

Mr. Groover: Mr. Chairman, I object to the question. Nobody is attacking Mr. Bond's character in the sense of his moral character. There has been no foundation laid here as to what type character the Reverend Creasy is testifying about. We are talking about whether or not the gentleman has placed himself in a position so as not to be qualified for membership in this House. His moral char-
[fol. 112] acter is not an issue in that regard.

The Chairman: I will let him answer the question.

By Mr. Moore:

Q. Would you answer the question, please?

A. Would you kindly restate the question.

Q. Would you believe Mr. Bond if he testified under oath?

A. Should he be—How was that again?

Q. Would you believe Mr. Bond if he gave testimony under oath?

A. I would.

Q. From your experience in the community, do you have any opinion as to his fitness and suitability for the office of the House of Representatives?

Mr. Groover: Mr. Chairman, I object to the question as being irrelevant, immaterial to the issue being determined, the issue which is being determined by this Committee, and secondly by the House.

The Chairman: What was that question, Mr. Moore, I didn't understand it.

Mr. Moore: I asked him whether or not he considered Mr. Bond a man fit to take his seat in the House of Representatives?

The Chairman: I will let him express that opinion.

The Witness: I do.

Mr. Moore: The witness is with you.

[fol. 113] Mr. Groover: No questions.

The Chairman: You may go down, Reverend.

(Witness stepped down.)

The Chairman: I would like to state at this time just to clarify something on these various motions that you gentlemen are making to dismiss the petition. I ruled on that.

That is the prerogative of the Committee to rule on that as a whole, and that will be one of the matters the Committee will rule on when we start considering the case as a whole. The Committee will vote on whether or not they will uphold my ruling or not. If they don't agree with my ruling, then it's out and gone. The Committee as a whole will pass upon that question when the case is finally rested. I ruled on it only to get the whole matter before us.

Mr. Moore: Mr. Malcolm Dean.

The Chairman: Raise your right hand, Mr. Dean.

Whereupon,

MALCOLM J. DEAN, being called as a witness, and after having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Moore:

Q. Will you state your name, please?

A. Malcolm J. Dean.

[fol. 114] Q. Where do you live, Mr. Dean?

A. I live at 50 Chestnut Street, Southwest.

Q. What is your business or profession?

A. Dean of Men, Atlanta University.

Q. How long have you been Dean of Men there?

A. For three years.

Q. During the summer of 1965, did you have occasion to enter political life?

A. Yes.

Q. In what capacity or what office did you enter the political world?

A. Running for the House of Representatives for the District 136.

Q. Were you affiliated with a party?

A. Yes.

Q. Will you identify that party for the record?

A. The Republican Party.

Q. Who was your opponent in that election?

A. Mr. Julian Bond.

Q. Do you know who won the election?

A. Yes.

(Laughter)

The Chairman: Maybe that got all the tension out of us. Maybe we can loosen up and go ahead.

By Mr. Moore:

[fol. 115] Q. Do you, yourself, Mr. Dean, know the margin of victory which Mr. Bond had?

A. Yes, it was about 2,300 to 486.

Q. During the time that this campaign was being conducted, did Mr. Bond do anything that you observed or saw or know as a matter of personal knowledge, which you consider improper or dishonest?

Mr. Groover: Mr. Chairman, I object to the question, irrelevant and immaterial—

The Chairman: The objection is overruled.

Mr. Groover: Excuse me, let me finish stating it, please.

The Speaker: Your objections are too long. Go ahead.

Mr. Groover: You have been accusing me of that for two years before now, Mr. Chairman.

—and the fact that the statements which have been made are subsequent to the time testified.

The Speaker: I will overrule the objection with this further observation: They were too long back there, too. You may continue.

Mr. Groover: Some of the House didn't think so.

By Mr. Moore:

Q. Mr. Dean, you may answer the question.

A. Will you please restate the question?

[fol. 116] Q. The question was, during the course of the campaign, do you have any firsthand knowledge or information as to whether or not Mr. Bond did anything improper or dishonest during the course of the campaign?

A. No, Mr. Moore, I think he conducted a very clean campaign. The constituents of District 136 chose Mr. Bond instead of me. There was nothing done during that campaign that would cause me to lose any disrespect for Mr. Bond whatsoever.

Q. Are you familiar with the events of the last couple of days since Thursday?

A. Yes.

Q. Are you familiar with the fact that Mr. Bond made the statement with respect to the war in Viet Nam?

A. Yes.

Q. Is it still your desire that Mr. Bond take his seat?

A. It is.

Mr. Groover: Objection.

The Chairman: The objection noted and denied.

By Mr. Moore:

Q. Did you lose any respect for Mr. Bond as a result of his statement of Thursday?

Mr. Groover: Objection.

The Chairman: Noted and denied.

The Witness: Mr. Moore, Mr. Bond was stating his opinion, and I believe that it is our God-given right to do so.

[fol. 117] Mr. Groover: Now, that is not responsive.

The Chairman: I will rule that out. That's right, that is not in response to the question. The gentleman is right. I sustain his objection to that.

By Mr. Moore:

Q. Do you know of any reason, based upon your own personal knowledge, why Mr. Bond should not be permitted to take his seat in the House of Representatives at this time?

A. No, and I think it is very unfortunate that this situation would come up in this session.

Mr. Groover: I move to strike that.

The Chairman: I will strike the part about "it's unfortunate that it came up," and I will allow the rest of it to stand.

Mr. Moore: That is all.

The witness is with you.

Mr. Groover: No questions.

(Witness stepped down.)

Mr. Morgan: Mr. W. Jones Lane.

The Speaker: Raise your right hand.

Whereupon,

W. Jones Lane, being called as a witness, and after having first been duly sworn, was examined and testified as follows:

[fol. 118] Cross-examination.

By Mr. Morgan:

Q. State your name, please.

A. Jones Lane.

Q. Where do you reside?

A. Statesboro, Georgia; Bulloch County.

Q. And that is District Number?

A. Sixty-four.

Q. You are a member of the House of Representatives, State of Georgia?

A. Yes, sir.

Q. Are you a complainant in this matter as a principal?

A. That's right.

Q. Mr. Lane, do you recall inviting Governor George Wallace to speak before the House of Representatives?

A. I did.

Q. Do you recall Governor Wallace on numerous occasions calling for disobedience of Federal law?

A. I believe he disagreed with the integration of the colleges. I think that is right.

Q. You disagree with the integration of the colleges, do you not?

A. No, sir.

Q. How about grammar schools?

A. No, sir, I make no objection to it. We have got them [fol. 119] in our school right now.

Q. Are you for integration, sir?

A. I am for it if the Courts say that that is the law of the land. I am willing to obey the law of the land.

Q. But you were willing to have Governor George C. Wallace speak before this legislature and invited him to do so?

A. I did.

Mr. Morgan: Thank you, sir, that is all.

The Chairman: Any other witnesses?

Mr. Moore: Yes, sir.

Senator Horace T. Ward from the 39th Senatorial District.

The Chairman: Senator Ward? Is Senator Ward in the room?

Raise your right hand, Senator.

Whereupon,

SENATOR HORACE T. WARD, being called as a witness, and after having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Moore:

Q. Will you state your name, please?

A. My name is Horace T. Ward.

Q. Mr. Ward, what position in government of the State [fol. 120] of Georgia do you hold, if any?

A. I am a State Senator representing the 39th Senatorial District of Georgia.

Q. Does that include the District of Mr. Julian Bond?

A. It does.

Q. Senator Ward, do you have a statement that you would like to make on behalf of the Respondent at this time?

A. I do.

Q. Would you make your statement, please?

Mr. Groover: Mr. Chairman, he identified the gentleman and then asked him, "Do you have a statement to make on behalf of Mr. Bond at this time?"

And his response was, "I do."

And he said, "Will you make the statement at this time?"

I object to him making a speech.

The Chairman: I would object to it unless the gentleman identifies in which area he wishes to make a statement on his behalf.

The Witness: Mr. Chairman, my statement is largely the—

The Chairman: I tell you, I am going to let him make his statement, then I will know whether to rule it out or not.

The Witness: Thank you, sir.

[fol. 121] The Chairman: They do it that way in court all the time.

The Witness: Mr. Chairman, Gentlemen, it is a real pleasure for me to come here today and come before this very distinguished committee.

The Chairman: Senator, now, just one thing. I am not trying to cut you off, but don't make a speech. Just make a statement.

The Witness: At the same time, Mr. Chairman, it is a great pleasure to be a citizen of this State, and a great honor for me to represent many of the people therein.

I say that I have read the statement made by Mr. John Lewis, and I have read many of the accounts in the newspapers which have been attributed to Mr. Julian Bond. I am a lawyer, a veteran, and a State officer, and as such I don't need to prove my patriotism or my loyalty, but I will say that I do not believe in draft card burning, or evasion of law, of counseling evasion of law.

I have known Mr. Julian Bond for over five years, since he was a student in college. At the same time, Mr. Julian Bond resides in my Senatorial District, and I have known his more intimately recently.

Since this matter broke last week, I have talked with Mr. Bond at length, concerning his statement, and concerning his views and his convictions. Based on the fore-[fol. 122] going, and based on my information and belief, I am convinced of the following: That his statements have been greatly misunderstood by people throughout the State. Secondly, that these statements were made out of conscience and conviction, and not after subversion and agitation. That Mr. Bond is not a member of the Communist Party. Mr. Bond would not conscientiously advocate the burning of draft cards nor the evasions of laws of the United States.

I feel that he is a loyal American. I feel that he will uphold the oath if he is permitted to take it. I feel that he will be a good citizen and a good Representative, and

I conscientiously urge upon this Committee that he be allowed to take his seat.

The Chairman: Do you renew your objection, Mr. Groover?

Mr. Groover: That is all right.

The Chairman: He does not renew the objection, so the statement stands.

Thank you, Senator.

Wait a minute, he may have a question. Just a moment.

Mr. Moore: No further questions, Mr. Chairman.

Mr. Groover: No questions.

The Chairman: No questions. You may come down, Senator.

[fol. 123] (Witness stepped down.)

The Chairman: Next witness.

Mr. Moore: Mr. Chairman, may I make an inquiry.

Is WGST a state-owned radio or television station?

The Chairman: I don't know. So far as I know, it is not. You will have to ask somebody besides me, Mr. Moore, because I don't know.

Is WGST owned by the State?

Yes, it is; yes, it is. We will take judicial knowledge of that. I didn't know it, but we will take it.

Mr. Moore: And that Mr. Spivia is an employee of that station?

The Chairman: He is an employee of that station. Yes, that's right.

Mr. Moore: The Respondent calls in his behalf at this time the Honorable LeRoy R. Johnson, from the State 38th Senatorial District.

The Chairman: Senator Johnson.

Raise your right hand, Senator.

Whereupon,

SENATOR LEROY JOHNSON, being called as a witness, and after having first been duly sworn, was examined and testified as follows:

Direct examination.

[fol. 124] Q. Will you state your name, please?

A. LeRoy Johnson.

Q. Where do you live, Senator Johnson?

A. 372 Larchmont Drive in Atlanta, Georgia.

Q. Do you hold a position in the State government of the State of Georgia?

A. Yes, sir, I do, as a Senator from the 38th District.

Q. Senator Johnson, do you have a statement to make at this time relating to the issues surrounding the right of Mr. Julian Bond to take a seat in the House of Representatives?

A. Yes, sir, I do.

Q. Will you make that statement, please?

A. Mr. Speaker, and gentlemen of this august body—

The Chairman: Senator, I impose the same warning: A statement and not a speech.

The Witness: Yes, sir, thank you.

I speak to you today, not as a Negro, though I am very proud of my heritage, but as a Georgian, and I want to thank you for this opportunity to this Committee for appearing before you.

Now, I stand before you as a member of the Georgia Legislature, believing in the Constitution of the United States and the Constitution of Georgia, and supporting, if you please, our Country's foreign policy in the Far East and in the Middle East. In 1962, when I was elected to the Senate, I adhered to the policy of responsibleness, and I [fol. 125] have sought since my election to be responsible and to act responsible on every occasion and in all endeavors.

Since 1962, we have come a long way in this State. I have watched progress take place before my very eyes,

and I have been a part of and witnessed events which some said could never take place in the State of Georgia. The image of this great State since 1962 has been one of continuing progress when compared with our sister states like Alabama and Mississippi.

The present administration under the leadership of the Governor of this State has had an unusual success beyond the boundaries of Georgia in improving the image of this great State. Now, gentlemen, we are confronted with an issue which could do irreparable damage to the great image of this great State, and could, in the eyes of the world, set us back to the uncolorful days of the past.

I do not personally approve of the statement that gave rise to this controversy; however, I am aware of the fact that the issue before us today is whether or not Representative Julian Bond is loyal to this Country and will support the Constitution of the United States and the Constitution of Georgia, and whether or not he advocates the violation of Federal laws.

If Mr. Bond states before this Committee that he is [fol. 126] willing and prepared to take the oath of office, thereby declaring his loyalty to this Country and supporting the Constitution of the United States of "Georgia," and if Mr. Bond, as a part of the oath, states before this Committee, that he is not a member of the Communist Party, and if Mr. Bond states he has not counseled or advocated the violation of any Federal laws; then it seems to me that this Committee should, without question, vote to seat Representative Julian Bond.

I call to your attention, Gentlemen, this statement issued today, in which the questions I raised have been answered by Mr. Bond, I believe, to the satisfaction of Members of this Committee.

He has stated that he will take his oath. He has stated that he has never counseled the burning of draft cards, and he has stated that by taking his oath, he is loyal to this Country, and is not a member of the Communist Party.

Gentlemen, I suggest that though we may disagree with the statement made by Representative-Elect Bond, we must be very, very careful in establishing a dangerous precedent that may ouster a man from this body for dissenting from a governmental position. Let us keep in mind that this statement made by Mr. Bond was made by Mr. Bond as a private citizen and not as a member of this legislative body. Let us keep in mind that Mr. Bond is only 25 years of age. This is his first political venture, and he is bound to be misunderstood. Mr. Bond's effectiveness has been [fol. 127] greatly damaged in this Legislative body, and he has undergone, I am sure, many unpleasant experiences.

In my judgment this man has suffered and has been punished to such a degree that it would do this august body little or not honor to deny him his elective seat.

I, therefore, urge this Committee with all of the sincerity that I can muster that we not be stampeded into performing an act today which may be an albatross around our neck for the next decade. Let us therefore disagree, if we please, but let us never ouster or expel a member of this body who is willing to take the oath of office and pledge his loyalty to this Country, and support the Constitution of Georgia and the United States. Though we may disagree, let us never go on record as expelling any member doing such because he has dissented from a governmental position.

Thank you, Mr. Chairman, and gentlemen of the Committee.

The Chairman: Any questions by either side?

Any questions, Mr. Groover?

Mr. Groover: No questions.

The Chairman: No questions from Mr. Groover. Anything further, Mr. Moore?

Mr. Moore: No questions.

The Chairman: Come down, Senator.

[fol. 128] (Witness stepped down.)

Mr. Morgan: At this time, may we address the Chair?

At this time, our case is now complete, since so much

of the evidence that would have been favorable to us has been put in by Mr. Groover.

We do have with us, of course, Mr. Bond. It is my understanding that he will be subjected to questions after Mr. Groover presents the remainder of his evidence, and any argument that comes up.

The Chairman: The Committee can ask Mr. Bond any questions they want to, and also inquire of counsel about anything they want explained further.

Yes, he will be, Mr. Bond will be called back for any questions from any member of the Committee at any time.

Mr. Morgan: Now, I am trying to understand. We will rest with that stipulation, that he will be questioned by the Committee.

The Chairman: The proponent has the opening and the closing, a 30 minute combination of the two, and the respondent has 30 minutes also, sandwiched in between.

Mr. Groover: Do I understand that the Chair has established the procedure that after counsel and Mr. Bond, for the applicant and myself, for the protestant, have made our summations, that the Committee will then call back other people, or will that be done prior to those summations?

[fol. 129] The Chairman: After all the summations have been made, then the Committee, if they wish to question anybody, may question him on the statements that you make and on the—I will call Mr. Bond back, and ask if they have any questions of him they wish to ask after the summation on both sides.

Mr. Groover: Well, Mr. Chairman, thank you.

Mr. Chairman, I desire at this time, to take not in excess of 10 minutes of the 30 minutes allotted to me in my opening remarks, and rather than addressing this Committee for that 10 minutes, or such portion thereof as it shall require, I will at this time be delighted to answer or attempt to answer such questions as any member of the Committee might have that would require some clarification.

I believe Mr. Alexander indicated some desire earlier.

The Chairman: Does any Committee Member desire to ask Mr. Groover any questions?

Rep. Alexander: Yes, sir.

The Chairman: Mr. Alexander.

Rep. Alexander: I would like to know, first, do you contend that a member of this body must conform to the prevailing views of any political body?

Mr. Groover: In no way must a member of this body conform to the political views of any body at any time, but he must, if he is to take an oath, conform to the laws that are on the books, and not advocate or condone their viola-
[fol. 130] tion, nor to approve of others who advocate and condone their violation.

Rep. Alexander: Can you state whether or not you are aware of any official of the United States Government who has issued any statement to the effect that any member of this House, or member-elect, has violated any United States law?

Mr. Groover: This House of Representatives of the State of Georgia is the judge of members, of the qualifications of its members, and I don't care what any member of the Congress of the United States, including the President, has to say on the subject. This is the body that is called on to judge that.

Rep. Alexander: I would like to know whether or not you are aware of any statement in the past having been made by any member of this House or the Georgia Senate relative to any governmental official or any acts passed by the United States Government?

Mr. Groover: Yes, sir, a heap of us has criticized President Johnson, and a heap of people criticized Senator Goldwater. There has been a lot of statements made about a lot of people, but I am not aware of a member of this body, either at the present time or in times of which I had any knowledge actively advocating the giving aid and comfort to the enemies of the United States of America.

Rep. Alexander: You agree, don't you, that the last [fol. 131] statement is a matter of opinion as to giving aid and comfort? You realize that is a conclusion?

Mr. Groover: I propose to address myself to that rather thoroughly in just a few minutes.

Rep. Alexander: Now, back to this tape, would you state for the body, what do you intend to prove by the first tape that you played?

Mr. Groover: Well, first, he said in the one on Thursday that he is eager and anxious to encourage people not to participate in a war for whatever, for any reason, and that is a direct quote, for any reason, and I think that is treasonous if one ever existed. Now, on limited grounds with conscientious objection, on grounds recognized by the law of this land, but to say that he would encourage and was eager and anxious to encourage a person not to participate in the defense of the Country for any reason; what greater treason could there be?

Another thing he said, and I propose to address myself a little further, when asked the question, when asked the question if he thought that it was treason, that if this Country was at war, if it would be treasonable to advocate what he has encouraged and advocated, he didn't say "no." He said, "I would have to think about it. I would have to think about whether I am willing and strong enough to commit treason." That's one thing it showed.

[fol. 132] The Chairman: Another question?

Rep. Alexander: Yes, you made reference to the United States Code dealing with the draft. Will you state what you intend to prove by citing that?

Mr. Groover: Well, among other things, it says you shall not interfere with the draft. You shall not interfere with the identification registration, identifications that are given by the duly authorized people of the Selective Service.

Rep. Alexander: Can you interpret any statement, do you interpret a statement that any person makes relative

to the draft and Viet Nam as being a violation of that section?

Mr. Groover: I do, and I will refer to that a little bit later.

Rep. Alexander: I see, and you think that any member of the House or Senate who expressed a contrary opinion should not be seated?

Mr. Groover: No, sir. No, sir, that is not what I said. I will address myself a little further to that for such edification as I may be able to give you.

Are there any other questions?

Mr. Hull, I yield to the gentleman from Richmond.

Rep. Hull: How long have you sat in the House of Representatives?

Mr. Groover: Well, I served six years.

[fol. 133] Rep. Hull: Mr. Groover, I ask you, if a member of the House of Representatives willfully advocated that the people of the State of Georgia disregard the Civil Rights Act in its entirety, willfully and maliciously, would you think that this body should inquire into such a statement?

Mr. Groover: If he advocated the willful violation, but not raising the question of whether it has any validity, that is a different story. If he advocates going to the courts to find out what the law is, whether the Constitution has been violated, then that is one thing; but I don't take it that there is any question that the Constitution of the United States authorizes this Country to protect itself through duly enacted laws of the Congress of the United States.

Are there any other questions?

Rep. Melton: Mr. Groover, the Petition in paragraphs 4 and 5, are those the draft code sections, or will you read those?

Mr. Groover: Which particular petition were you referring to?

Rep. Melton: That is Petition A, second page, paragraph 4 and paragraph 5.

Mr. Groover: I have that volume here.

Rep. Melton: I understand they were read in the record, but I am particularly interested in them.

Mr. Groover: The verbiage of them was not read into [fol. 134] the record. Now, I will be—

Rep. Melton: You referred to them, I believe?

Mr. Groover: Yes, sir, I referred to them.

Rep. Melton: They are available?

Mr. Groover: Yes, sir, they are.

Rep. Groover: Do those sections pertain to the draft or to treason?

Mr. Groover: To the draft.

Rep. Melton: Now, do you propose to, well, you said you proposed to elaborate on treason, what about aid and comfort to the enemy? Do you plan to define that in more specific terms?

Mr. Groover: I plan to give you my views on it, Mr. Melton. Whether they will be compatible with yours is going to be question.

Rep. Melton: Well, that is the question of what I am here to vote on. That is the reason I am asking the question.

Mr. Groover: Yes, sir.

Rep. Melton: I am quite interested in a specific definition as the courts have held, what is aid and comfort to the enemy, and also, what is treason?

Mr. Groover: Well, I propose to give you a little bit later, the action of the Congress of the United States at one time.

[fol. 135] Now, Mr. Melton, for your benefit, I want it to be as much help to this House as I can. It is not my job to either advocate or not advocate his seating or rejection, but I was called in Macon, Georgia, and left Macon at 20 minutes till 1:00 today, the first I knew I was going to be here, so how much help I am going to be may be dubious.

Rep. Melton: Mr. Chairman, I addressed these questions to Mr. Groover simply because he prefers to prevent argument and because I am a member of the Committee, I am particularly interested in a specific definition of those two subjects.

The Chairman: Any other questions?

(No response.)

Mr. Groover: I believe, Mr. Chairman, that leaves me 20 minutes in conclusion?

The Chairman: Correct.

Mr. Morgan: First, I would like to thank you and the Committee, Mr. Chairman, for letting me appear here with Howard Moore and the privilege of counsel for Mr. Bond, and the right to speak to you for a few moments.

I have 30 minutes. I don't intend to take them all because I think the message is rather clear and rather short and simple and to the point.

In 1964, a campaign was run in the United States of America for President. Certain courses of action were [fol. 136] advocated in that political campaign by a man named Johnson and a man named Goldwater. They fought their battle. The positions may have changed but they debated in free American society with the right of free speech, and they clarified their positions.

Surely no one here would deny anyone here that right. Surely to set such a precedent here in the case of Julian Bond might another day come haunt this assembly, and haunt this Georgia house.

I know that the evidence presented thus far assists Mr. Bond in his case. You may disagree with him. Voltaire would agree with his right to disagree. Voltaire would have fought for the right to disagree to the death. I should certainly hope that we of the South would do the same. Many of us in the South have disagreed with many things for many years, and how could we censure someone for feeling another way about a crucial national issue.

Not only should the subject be debated, the subject of Viet Nam, but Bill D. Moyers, the President's press secretary, the Commander-in-Chief's press secretary, on November the 26th, stated exactly that, that the President believed in the right of dissent and the right to disagree.

Now, since the days of Tom Paine and Thomas Jefferson, the days of the men who wrote about the right to disagree and the men who gave us the Constitution of the United States for which Mr. Bond stands today, and the men like Madison who gave us the First Amendment, and others; [fol. 137] Mr. Bond has a right to speak, and that is purely and simply all that this case is about.

Socialists were elected in New York. Who came to their aid when the legislative body attempted not to seat them? The Republican nominee for President in 1961, and a former distinguished Chief Justice of the Supreme Court of the United States, Charles Evans Hughes.

Now, I understand Mr. Groover's position to be that Mr. Bond has either committed treason or give aid and comfort to the enemy. If Mr. Bond has done either of those two things then the proper place for Mr. Bond to be tried for either of those two things is in a court of law. And if a member of this body desires to swear out a warrant for Mr. Bond's arrest, then surely that should be done. But that is not what this is all about.

This is about the right of every Georgian, and every man to speak for segregation or against it; for the war in Viet Nam or against it; for whatever he desires.

Now, I want to mention to you that there was a man named Tom Watson once in Georgia. His statue stands not far from here, and it is my recollection that just after the First World War, Mr. Watson, in many of his speeches in Georgia, was against and opposed to the Selective Service law, and so stated. Would he have been denied a seat in this House?

[fol. 138] Now, with my belief in the South, and my belief in the youth of the nation, I just want to tell you a story

that comes back to me from college, which was the University of Alabama. In 1952, someone was quite concerned at that time about the rise of the United States Senator named Joe McCarthy. We were in the seminar, and the professor came back in with a letter, which was to demonstrate the youth of America.

The letter was something like this. It was signed by R. M. Brownlow. Mr. Brownlow died September before last.

"You were correct in your recollection of our recent conversation. When I was a young man, a reporter in Washington for a newspaper in 1904 or 5, I was walking across from the old House Office Building with Representative Arthur Slaton and an elderly gentleman named Herb Moye from Texas. Slaton was a Representative from Texas. As I walked across the street, the old man had gray hair on the nape of his neck, and a black string tie. As they walked along, the statement was made by Slaton, who was on the House District Committee: 'Have you ever seen a school board that wasn't composed of absolute nincompoops?' Whereupon, Brownlow responded that he had not, and the elderly gentleman harumphed, and he said, 'Well, I have. My father was a member of that board in Albemarle County, Virginia, and one day I met, with my hand in my father's, three other men, members of that board. They stood on a dusty road, and they decided to build another school house.' And that day, the old man said, [fol. 139] he met Thomas Jefferson, James Madison and James Monroe."

The man died September before last who met a man who had met Madison, Jefferson and Monroe. You live in a young nation, the youngest and most revolutionary of ideals, and ideals for the whole world.

What we are supposed to be fighting for in Viet Nam is the right of man to speak freely there and here. We cannot put, when a man speaks freely here, fight a war in Viet

Nam if you censure him, and if you refuse to seat him because of his free expression, we cannot truthfully say to the world that the United States is free. Mr. Bond's statement would be proved correct.

Mr. Groover is and has been close to many of you. He is an accomplished attorney, an advocate, and a skilled speaker. We have no opportunity to rebut Mr. Groover, of course. He will speak to you, I am quite certain, I trust, in non-passioned tones. I know that you will make your own decisions.

I do know this though: Demonstrate to yourselves, demonstrate to the world abroad that there is freedom here in Georgia. Demonstrate to the people that what Americans are supposed to be fighting for, demonstrate that we can really exercise those rights here. This Committee has this power, and so does this House of Representatives.

[fol. 140] Thank you.

The Chairman: Does somebody else, Mr. Moore, do you wish to make a statement?

Mr. Moore: Mr. Bond is here, and any members of the Committee.

The Chairman: Mr. Groover has the closing. After Mr. Groover closes, then Mr. Bond will be subject to questions.

You have completed oral arguments then?

Mr. Groover: No, sir, they sure ain't.

The Chairman: No, sir, I am just calling on you to complete your twenty.

Mr. Groover: Mr. Speaker, Mr. Chairman, pardon me, gentlemen of the Committee, I am well aware and subscribe to that philosophy spoken of by Voltaire when said, "I disagree with what you say, but I shall fight to the death for your right to say it."

Yes, I have had the privilege of serving with many of you, and I, in my time here, I do not believe that I have ever stood in the well of this House and attempted to sway to one side of the issue rather than the other against my consicence, and against my convictions, and unless I felt

that the facts justified them. Some of you do not know me. You are perhaps better off, but if you would like any testimony to my sincerity, turn to the man who has served with you, with me, next to you, and ask him if I have ever attempted to mislead you.

[fol. 141] As I stated a few moments ago, I was called into this matter at 12:30 while still in Macon, so with such preparation as I could make was riding in an automobile between Macon and Atlanta, and I sincerely desire to be of help to the House in the resolution of this matter; not to participate in it; not to advocate, as an advocate, one side of the issue rather than the other; but rather to assist you in your thinking.

The glossover, which is exactly what has been done, of the import of what has been said and what has been done by Mr. Bond before he presented himself, and by his associates to whose views he now subscribes, continues to subscribe, cannot be answered simply by saying, "You may be next."

That is the essence of what has been said. If Julian as a private citizen stood upon the streets of the City of Atlanta and said, "I sympathize with and support the men in this Country who are willing to respond to a military—who are not willing, who are unwilling to respond to a military draft which would compel them to contribute their lives to the United States' aggression in Viet Nam," he would have that right, and would be subject only to such sanctions as the United States government saw fit to impose.

But that is not the issue. If you, as a private citizen, stood upon the streets and said, "I will fight to the death," or "blood will run in the streets," or "No, not one," and [fol. 142] advocated defiance of a Federal edict of a Federal Court applying to you, in a case duly brought against you, or in a Federal Statute, then you too would be subject only to such sanctions as the Federal Government and those Courts might impose. But the Constitution

of this State imposes upon you not alone the duty to assemble here together and pass laws for the government of its people, yourselves included, but it imposes upon you not just the right, but also the obligation to judge the election and qualification of your members.

If some group, some time, sent to you a member who obviously advocated the overthrow of the State Government or Federal Government by force and violence, certainly it would not only be your right but it would be your duty to refuse to admit him among your membership, and to refuse to permit the people of the State of Georgia to be governed in part by his actions.

Mr. Bond spoke as an elected, duly elected Representative. He spoke at a time only a few days, three days before he knew he would present himself before this House, and that his qualifications, not just his election, but that his qualifications and his ability to take the oath would be open for inspection. He saw in those three days that not only himself, not only the protestants in this matter, but persons who have appeared here and made statements for him, disagreed with and were concerned with his statements to such an extent that he saw fit, in Sunday's paper, [fol. 143] to issue a clarifying statement, but still his statement is the same tenor, still this morning, having presented himself to you with the question of his qualifications before you, his statement is the same. His attitude is the same. His ability, his qualifications are the same.

It has been said that he can subscribe to the oath which all of you have taken. Yes, I imagine, if asked he would hold up his hand and say, "I will support the Constitution of the United States and of the State of Georgia, and on all questions and measures which may come before me, I will conduct myself as will in my judgment be most conducive to the interest and prosperity of this State." He not only, perhaps would say, "I do," to that, but if called upon to do so, he would get before this microphone and repeat those words.

But I am reminded of the statement made by someone that what you do speaks so loud, I can't hear what you say.

Now, what has he done? He has subscribed to and stated that these are his views: "I (substituting for we), I am in sympathy with and support the men in this Country who are willing to respond to a military draft which would compel them to contribute their lives to the United States' aggression in Viet Nam in the name of the freedom we find so false in this Country."

[fol. 144] He has a right as an elected official, or as a private citizen to say that in his opinion the United States' participation in Viet Nam is aggressive and without right, and that we should get out of Viet Nam. He has that right, and I would be in defense of his right to say that it is aggressive if he wanted to, that he disagreed with it, that he abhorred it, that we should get out; as much as any other man, but that is not what he said.

"I am in sympathy with and support the men in this Country who are unwilling to respond to the military draft." He said on two occasions in public statements, and once here, that he is in sympathy with and supports those men who are willing to violate the unquestioned statute laws of the United States of America. He is in sympathy with and supports those persons who, in his own words, for any reason would deny their obligation and their duty to defend and protect this Country against its enemies.

It may well be that Mr. Bond does not feel that the Viet Cong, or that the Communists are the enemies of the United States. He has that right. If he does not feel that they are our enemies, he has that right; but as an elected public official, he has the obligation to support the statute laws of the United States, and to refuse to give aid and comfort to our enemies.

Is there a man among you who would deny that the statements such as this to which he subscribes give aid and [fol. 145] comfort to our enemies? Is there such a man

among you who would deny that the advocacy of the refusal of the American people to defend their shores is giving aid and comfort to their enemy? No.

Mr. Bond has a right to be tried for treason elsewhere, such is not the trial here; but whether or not he in fact subscribes to the Constitution of the United States, which specifically prohibits the giving of aid and comfort to our enemies, is what is before us here. Mr. Melton asked me if I was going to try and define aid and comfort to our enemies. I guess, Mr. Melton, that the question, or the definition would have to be in the form of a rhetorical question:

Is it aid and comfort to our enemies when we add strength to their position in opposition to us? Is it aid and comfort to your enemies when you sap the will of Americans to defend America? Is that aid and comfort? Is it aid and comfort as a public official to attempt to get people to violate the statute laws of this State?

I say it is, and I say that precludes him from being able to sincerely take the oath that is required by the Constitution.

He speaks it out of his own mouth, when asked the question, if we were at war on a technical basis, if he thought it would be treasonable to advocate that they avoid the draft and refused to respond to the draft; he said, "I would [fol. 146] have to think about it."

Is a man qualified to sit in this House who has to think about whether he would commit treason under a given circumstance?

About a hundred years ago, 98 years ago in this very chamber, there occurred a precedent that is sustaining of the position that we are taking here. In 1868, the Legislature of Georgia, duly elected by the people of this State was seated and sworn in, and Buckner Bulloch, the man for whom the County from which Jones Lane is from, or who bears the same name, served as its governor. They were sworn in and he notified the military governor that the Legislature was here and ready to do business.

That Legislature was subsequently adjourned by the military governor, and another one elected. After the adoption of the Constitution of 1868, Georgia had been readmitted to the Union, only on condition that it ratify the Fourteenth Amendment, and only on the condition that it repudiate the debt, the State war debt.

When that Legislature convened, Congress was notified and the military governor was notified that Georgia had complied with the terms of the Readmission Acts. They met in July in this hall, July the 9th, 1868, and for the first 13 days, addressed themselves to the question of the qualifications of some members, and the contest was on this basis. The people who had fought for the Confederate [fol. 147] States were permitted to be seated without question, upon taking the oath. But there were among them people who, prior to the War Between the States, had served in public office and had taken the oath similar to the one that is taken here, to uphold and defend the Constitution.

Those people had participated in the War Between the States on the side of the Confederacy. After the War, after the ratification of the Fourteenth Amendment, those people were again reelected to this body, this House of Representatives. And this House of Representatives said those people who once took the oath cannot now be seated because we do not believe them on oath. They stood in the well, even as he says he stands in the well, ready, willing and able to subscribe to the same oath as every other member. But this House of Representatives refused to seat at least eight of those members and declared a vacancy and another election.

That, gentlemen, was an interpretation that this House not only has the right, but the duty to judge whether a man, in fact, is taking an oath.

Not only that, the Congress of the United States, that same Legislature refused to adopt the Fifteenth Amend-

ment, which had not even been proposed when it had been declared that they were readmitted to the Union, and the Georgia delegation went to Congress, presented its credentials as being duly elected, presented themselves to hold up their hand that they would take the oath that every [fol. 148] other man took to support and defend the Constitution of the United States, and the Congress refused to seat the first member of the Georgia delegation to Congress, and we were a year without any representation, and they refused to seat them. Why? They refused to seat them because they said, "What you do speaks so loud, we can't hear what you say. We don't believe you when you take that oath."

Now, Gentlemen, all of that appears in the House Journal of 1868, and in McElrath on the Constitution of this State.

You are called upon not to judge this man for any reason whatsoever but whether or not you think that what he subscribes—when he subscribes to the oath of office there is evidence sufficient to justify you in concluding that that is an empty oath, and that he still subscribes to the proposition that those who are willing to give aid and comfort to their enemies have his endorsement, his encouragement, his eagerness and his urging.

No, don't decide this case based on whether Julian Bond agrees with whether or not we ought to be in Viet Nam. Don't decide it on that. He has got the right to disagree with that. Julian Bond has got the right to disagree with any policy of the United States or the State of Georgia, the County of Fulton, but Julian Bond or no one else in this body or out of it, who holds a public office, has got a right to say: "I advocate giving aid and comfort to my enemies, [fol. 149] and I refuse to apologize for such a stand or to retreat from such a stand."

Yes, the evidence is here. Do not be concerned concerning the enumeration and the answers and the threat of a Federal Court. We have stampeded by worrying about them.

When Lyndon Baines Johnson was first elected to the Senate, a certain district court down there in Texas found that some of his cohorts had stole the election in his behalf and refused to seat him. He appealed it. Judge Abe Fortas—this is the way he got on the Supreme Court of the United States—he appealed it to the Federal Circuit Court—I mean the Fifth Circuit Court of Appeals held in 170 Federal Second, Johnson against Stephenson, that the Federal Courts have no right to determine who shall be seated in the Senate of the United States, and whether or not the election was stolen. Lyndon Baines Johnson should be seated, and he was.

The Chairman: Two minutes, Mr. Groover.

Mr. Groover: Thank you, Mr. Speaker—Mr. Chairman.

Gentlemen, your courtesy and attention has been appreciated. The courtesy of the gentlemen on the opposite side has been appreciated. Do not gloss over the proposition of whether a man is qualified to govern you, me, and others by whether he disagrees. That is not the issue.

But remember the statements uttered from his own words: "I admire the courage of one who would violate, who has got the courage to violate a law of this land. I am [fol. 150] in sympathy with them and support them, and I don't know whether I would have the courage not to be guilty of treason if called upon to make such a decision."

Is such the composition of this body, or will such be the composition of this body?

Thank you.

The Chairman: Now, any member of the Committee that wishes to ask Mr. Bond a question, he will now rise and stand before the mike and if you have a question you wish to ask him, please raise your hand and address the question to Mr. Bond. Any member of the Committee.

Does any member wish to have?

(No response.)

The Chairman: No one wishes to ask him a question. Mr. Bond you may be seated.

Gentlemen, the House, by the way, is continued in recess indefinitely, so please stay here so you will know whenever the recess is up.

There is one of three reports that this Committee can bring back.

Before I say that, though, let me say this: That both the proponent and the respondent agreed to this hearing this afternoon at 2:30, this the 10th day of January, 1966. They agreed to have the hearing on this day at 2:30. Is there [fol. 151] any other witness that either the proponents or the respondent wishes to hear from?

(No response.)

The Chairman: No other witness that either wishes to hear from. All right, the Committee can bring back one of three reports.

It can bring back a report to seat Mr. Bond.

It can bring back a report to seat Mr. Bond with censure.

It can bring back a report to refuse to seat Mr. Bond.

The Chair recognizes the gentleman from the 4th Circuit.

Rep. Ware: Mr. Chairman, as I understand it, we are down to the point to where we will start writing our report or making the decision in this case, is that correct?

The Chairman: The gentleman is correct.

Rep. Ware: Due to the complexities of this situation, I move we go into executive session for the purpose of writing a report.

The Chairman: Does the attorney for either the Respondent or the Proponent object to that?

Mr. Groover: No, sir.

Mr. Moore: We have no objections to that.

The Chairman: The Committee will now retire to room [fol. 152] 340—341 instead of 340.

(Whereupon, the Committee went into executive session.)

The Speaker: All members take your seats. The floor will be cleared of everyone except those authorized to remain thereon, that is, the press, attaches of the House and

Senate, and the news media. Every other person please clear the floor now, with the exception of the attorneys for the parties.

If you are on the floor of this House, we don't want to embarrass anybody, but if you are on the floor of the House and don't have a legal pass. We do not want anybody on the floor of this House unless they are legally qualified to be on it, so please don't put us in a position to have to ask you to leave.

Now, if you are members of the family of the Legislator, you are part of the qualified members. I see some of the freshmen are running their wives off. That is a rule of the House that members of the family can stay as part of them.

A Committee report will be in here in a matter of about five minutes. The House is not reconvened and as soon as the Committee report is read, let me give you the procedure.

Anyone wishing to speak to the report, either for or against it, will be allowed to do so. Please come to the [fol. 153] Speaker's stand and give me your name. Then after everyone has spoken, either for or against the report, if there is any minority report filed, then the first person to sign the minority report will have, after the previous question is ordered, will have 20 minutes to present his case. He can take the whole 20 minutes himself, or divide it up into any parcels that he wants to to anyone else, or farm it all out.

Then under the Rules of the House, the Chairman of the Committee making the report has the last 20 minutes after the previous question is ordered, to make it himself. I happen to be the chairman of the Committee. I don't propose to make it myself. I can farm it out to anybody I want to, to speak to the report of the Committee, and we will wait and see what happens at that time, whether or not anybody speaks to it.

(Short pause.)

I want to commend everyone in the House, both on the main floor and in the gallery for the perfect behavior that

we have had. I want to commend you, and I want to thank you. The Chair appreciates it, and I don't anticipate any change in attitude or behavior of the people on the floor of this House or in the gallery at any other time while this proceeding is under way. Thank you again. I expect with the exception of the two governors' fight, we have stayed here longer on opening day than most anybody has here recently.

(Short pause.)

[fol. 154] The Speaker: All members please take your seats. Please alter conversation.

I call upon the gentleman from Carroll, Mr. Wiggins, to read the report of the Committee.

Doorkeepers, close all the doors, close all the doors and keep them closed. The Secretary to the Legislative Counsel will come in this door to the left and he can be ascorted in.

Close those doors and keep them closed, unless a legislator comes in, then let him give his credentials.

Mr. Wiggins, read the majority report and then the minority report.

Rep. Wiggins: The Special Committee appointed pursuant to House Resolution No. 7 conducted a hearing on January the 10th, 1966, beginning at 2:30 o'clock p.m., in the chamber of the House of Representatives, State Capitol on the matter of Petitions filed challenging and contesting the seating of Representative-Elect Julian Bond of the 136th District.

Based upon testimony and the evidence and documents before this Committee, the Committee recommends that Representative-Elect Julian Bond not be allowed to take the oath of office as a member of the House of Representatives, and that he not be seated as a member of the House of Representatives.

This 10th day of January, 1966,

Respectfully submitted, George L. Smith, Chairman; [fol. 155] William J. Wiggins, Secretary.

The Speaker: That is George T. Smith.

Rep. Wiggins: I beg your pardon, George T. Smith, Chairman.

The Speaker: He wouldn't sign it. I tried to get him to.

Rep. Wiggins: There is a minority report, which I will read:

The Special Committee appointed pursuant to House Resolution No. 7 conducted a hearing on January the 10th, 1966, beginning at 2:30 o'clock p.m., in the chamber of the House of Representatives, State Capitol on the matter of Petitions filed challenging and contesting the seating of Representative-Elect Julian Bond of the 136th District.

Based upon testimony and the evidence and documents before this Committee, the undersigned members of the Committee recommend that Representative-Elect Julian Bond be allowed to take the oath of office as a member of the House of Representatives and that he be seated as a member of the House of Representatives.

This 10th day of January, 1966,

Respectfully submitted.

The report is signed. The first signature, J. C. Daugherty, 134th District.

The Speaker: The Clerk will read the resolution.

[fol. 156] The Clerk: A Resolution from Mr. Smith of Grady, and Mr. Wiggins of the 32nd:

A resolution relative to the matter of the seating of Representative-Elect Julian Bond; and for other purposes.

Whereas, a special committee created pursuant to House Resolution No. 7 which was appointed for the purpose of holding a hearing on petitions challenging and contesting the seating of Representative-Elect Julian Bond of the 136th District has conducted a hearing in said matter; and

Whereas, said committee has submitted a report in which it is recommended that Representative-Elect Julian Bond not be allowed to take the oath of office as a Representative as a Representative of the House of Representatives and

that he not be seated as a member of the House of Representatives.

Now, therefore, be it resolved by the House of Representatives that the report of the aforesaid committee is hereby adopted and the recommendations contained therein shall be followed.

Be it further resolved that Representative-Elect Julian Bond shall not be allowed to take the oath of office as a member of the House of Representatives and that Representative-Elect Julian Bond shall not be seated as a member of the House of Representatives.

Be it further resolved that the Clerk of the House is hereby instructed to immediately transmit a copy of the [fol. 157] aforesaid report and a copy of this resolution to the Governor, to the Secretary of State and to Representative-Elect Julian Bond.

The Speaker: The Chair recognizes Mr. Busbee.

Rep. Busbee: Point of parliamentary inquiry.

The Speaker: State your point.

Rep. Busbee: In the event that a motion is made after the previous question, since the minority report has been filed, isn't it true that under Rule 184, you would have 20 minutes allowed for the proponents, and 20 minutes allowed for the opponents, with the person first signing the minority report designated that time?

The Speaker: He is correct, with the opponents having the first 20 minutes and they can divide it up any way they wish. That is the minority group. And then the majority report will have the closing 20 minutes after the previous question has been ordered, and they have indicated to me that they have divided up that time.

Is there objection to the previous question being ordered?

(No response.)

The Speaker: The Chair hears none. The previous question is ordered.

The Chair now recognizes—Which man wishes to speak first for the minority report?

[fol. 158] The Chair recognizes the gentleman from the 134th, Mr. Daugherty.

All members take your seats, now, and give the gentleman your undivided attention.

Rep. Daugherty: Mr. Chairman, and my fellow members of this Georgia General Assembly, and the Special Rules Committee.

I am J. C. Daugherty, elected from the 134th District of Fulton County, June 16th, 1965, to serve in the House of Representatives of the Georgia General Assembly. Let me first say that I served three years in World War II with 30 months in the Pacific Theater.

Let there be no doubt about my belief in the American Constitution, the Georgia Constitution and the laws promulgated thereto.

I believe in the Selective Service laws of this Country, and I want to say here immediately that I am delighted to be a member of this great and august body, the Georgia General Assembly.

A check of history shows that no Negro has served in the Georgia General Assembly in the House of Representatives since 1907. However, since that time, and during the period immediately following this period, this State has made momentous and great strides in its educational and industrial development. We have been fortunate in not being beset with the catastrophic and the chaotic events [fol. 159] that rendered Alabama, Virginia, Mississippi and Arkansas asunder and cost these states millions of dollars in lost revenue, potential industrial development, and consumer buying.

I sat and listened quietly and intently to the charges made against Julian Bond and the evidence adduced before the Special Committee, and I want to submit, gentlemen, that I have yet to clear in my own mind a sufficient preponderance of evidence uopn which an order refusing to seat Julian Bond could be based.

There is no question in my mind, gentlemen, that if this has been in a court of law but what a motion to dismiss the charges for failure on the part of the propounders to make out a prima facie case would have been sustained; and now I come to say that this is a deliberative body and to urge my colleagues to bear this in mind at every point as they decide this question.

All the statements set forth and attributed to one prospective member of this House of Representatives has created a situation as it now exists. I feel that the overall concern and consideration should address itself to protecting and preserving the image of this great State, and the integrity of this great body. I do not believe that the emphasis and the notoriety accorded this premise is called for, or that the charges are sufficient in terms of any near or clear present danger to the security of this nation, or [fol. 160] that any assertion made by Julian Bond or attributed to him went beyond permissible freedom of speech guaranteed by the Constitution of the United States set forth in the First Amendment.

We are charged, gentlemen, with the responsibility of administering the public treasury and are the watchdogs of the welfare of four million Georgians. When the word goes abroad that Julian Bond was not seated, there will be no discussion of any relevant cause, but there will be much said that will blacken and besmirch the reputation of this great State, and will make my service, your service, and the services of those who follow us in this great body less delightful than might have been.

I, therefore, urge this body to reverse the decision of the Special Rules Committee, and permit Julian Bond to take his seat as a duly elected Representative from the 134th District—the 136th District of Fulton County.

The Speaker: The next gentleman to speak to the minority report, the Chair recognizes the gentleman from the 135th, Mr. Brown.

Rep. Brown: Mr. Speaker, members of this historic body, by virtue of my belief in the principles of American

Democracy, including our system of fair play as outlined in the Federal and State Constitutions, I sincerely urge that you will give full consideration to the possible conse-
[fol. 161] quences of whatever action is to be taken here this afternoon.

Each of us has been elected to this body to make laws which are going to make for a framework wherein all Georgians can more fully participate in the greatest traditions of our nation in keeping with the spirit of the United States Constitution.

To unseat a member of this body on the grounds of a personal statement which appears not to be violative of any law, would be a grave step which could cripple the entire operations of this body for the 1966 session. Georgia has the potential of becoming a great State, a State wherein the full manpower force should be able to develop to its maximum without the regard to race, creed or color. However, the realization of this greatness shall be delayed once again if we act without due cause in not seating our fellow Representative, Julian Bond.

Thank you.

The Speaker: Who is the next one?

The Chair recognizes the gentleman from the 133rd, Mr. Alexander.

Rep. Alexander: Mr. Speaker, fellow Representatives, ladies and gentlemen, I am William H. Alexander of the 133rd House District.

I would like to say in the beginning that I too am a veteran of the United States Army, having served abroad, and [fol. 162] I too believe in the laws of the United States and the laws of this State.

The pros and cons of this issue with which we are faced have been discussed in great detail, and time does not permit us to here discuss again all of the issues that we discussed in the Committee, but it is my sincere feeling that there is absolutely no evidence to support the report which has been brought in by the majority of the members of the Special Committee.

Firstly, there has been a violation of no law. No one has cited any law which the Representative-Elect is supposed to have violated.

There is a very serious constitutional question dealing with free speech, and I think that argument has been very ably made by counsel and I need not repeat it here. There were certain procedural irregularities in the whole hearing held here today, particularly with reference to the admission of the tape, and I need not take time to recapitulate all of the arguments made by counsel in reference to those procedural arguments, but I am in agreement with those arguments.

As has been stated, the eyes of the world are upon this body now, and will be tomorrow. It is my sincere hope that members of the House will think seriously before they vote on this issue, and will not vote to adopt the majority [fol. 163] report, but will vote to adopt the minority report, and finally, I wish to say, even if we assume, and I don't assume; but even if we did assume that the Representative-Elect has been guilty of breaching some rule or regulation, certainly the action recommended by the majority is far too severe. I do not think that he has violated any law.

I think he should be seated, and I urge the members of this delegation to give this matter due consideration, and vote to reject the majority report, and vote to adopt the report which has been signed by three members of the Committee as a minority report, namely, a report to seat the Representative-Elect.

Thank you.

The Speaker: Who wishes to be the next speaker to the minority report?

(No response.)

The Speaker: No other speakers, that is all.

The Chair recognizes the gentleman from the 64th, Mr. Lane.

Rep. Lane: Today we are engaged in armed conflict in South Viet Nam. American men and women of all colors are actively engaged in this conflict and are being killed and

wounded. We know from reading the newspapers throughout the year of 1965 American fighting men have been greatly upset and discouraged by the attitude taken by cer- [fol. 164] tain groups in this Country. They ask no more than we sustain their efforts and no less.

We further know that statements such as those that have been made by Mr. Bond and condoned by him have received great fanfare in Communist China and North Viet Nam. We know that war is not only won by the amount of explosion and death, but also the attitude of the people.

I feel and I believe that you feel that statements such as the one condoned by Mr. Bond give our enemies both the armed forces and the civilian population a feeling that they are right, and further encourages them to sacrifice for what I believe to be an unholy cause.

The Constitution of the United States and the Constitution of the State of Georgia define treason, and you have read and you have heard the discussions early today. There is one significant portion of the treason statute which we are concerned with, and that is the portion that says anyone who gives aid or comfort to the enemies of the United States or the enemies of the State of Georgia is guilty of treason.

I know of no fundamental right than that of free speech. Many of you and yours have sacrificed themselves in defense of our country. This is an obligation of citizenship. I ask you, can you in all consciousness of the men that you know in Viet Nam, say to them that we condone a member [fol. 165] of the Georgia Representatives whose feelings seem to be that he does not only support, but has aligned himself against them in the field of conflict?

I further ask you one other question: Do you feel that the people of your district and the people of Georgia want you to condone one who has departed from the responsibility of citizenship and his responsibility of being a government official?

Mr. Justice Holmes once said that even freedom of speech must be tempered and that no man has the right to yell "fire" in a crowded theater when in fact there is no fire.

Pursuant to lawful authority, the President of the United States is authorized to commit the armed forces of this Country thrughout the world for the protection of freedom and self government. As long as this authority exists, no defiance should be made or tolerated relative to this authority. It is my sincere belief, and, I am sure, the belief of my colleagues that in order for the citizens of this sovereign State to have confidence in this legislative body, that we are obligated to refuse to seat Representative Bond.

I thank you.

The Speaker: The Chair recognized the gentleman from the 97th.

Rep. Patford: Ladies and Gentlemen of the House, the [fol. 166] events of the past now sadden us. We find ourselves now involved in a problem which challenges the dignity of the House, in which we sit, for there is blood that runs down the trenches in a far-off land, that causes tears to run down mothers' cheeks whose sons have perished, to run down widows' and children's faces whose husbands and fathers made the supreme sacrifice for a freedom that we all enjoy. And yet, there are those in this land that love not country more than self, and advocate doctrines that ring at the very heart of our nation itself.

Usually these creatures are far, far away from this land of beautiful rivers, great cities, pine forests, fresh air and pleasant living known as Georgia, but now we find not only our State, our counties, but the Legislature itself have been invaded by one whose "SNCCing" pursues not freedom for us but victory for our enemies.

But ladies and gentlemen of this house, the issue that whether he be with us or not is not what plagues me most, but what tears at my soul is that his chair was emptied by a court edict which threatens to tear at the very heart of his nation as founded by our forefathers; for many great and noble Georgians whose service in this hall has bettered our State and led it to unprecedented heights of prosperity and advencement are gone. These men were God-fearing men, law abiding, respecting men, whose respect and loyalty to country and law led many of them to support the very

[fol. 167] measure that resulted in the termination of their services here.

Yes, gentlemen, I regret to say that reapportionment ousted such noble and distinguished statesmen as Fred Walker, George Brooks, Henry Milhollen, Frank Branch, Waldo Henderson, Jack Knight, Grover Lee, and many other men like them, and has shoved in their stead that this State might see darkness instead of light, the infamous Mr. Bond.

The dismay of those who proposed reapportionment might lead them now to pray that things might be as in the past when capable, sincere, conscientious patriarchs watched over and carefully perfected the decisions that were made in these halls. But I suggest that their prayers be for themselves and this body, that someday our accomplishments might contain the integrity, the ability, the wisdom and the foresight of the men whose knowledge guided these halls for over a century and a half; and the wisdom of our forefathers has served us well, and there are those among us who wait to see if the courts can be as wise. Certainly up to now, we can only say the courts' decisions have been chaotic at best.

The Speaker: The Chair recognizes the gentleman from the 21st.

Rep. Bagby: Mr. Speaker, ladies and gentlemen of the House, I approach the well of the House tonight with more apprehension in my heart and in my mind than in all the [fol. 168] years of experience that I have had here.

This is a serious matter. I have worried about it all day long. I feel that I must support the majority report, and I do so with this apprehension: That I have been boxed and I have been put in a trap by a militant organization whose designs upon this Country are not for the best interest of the people of Georgia.

I feel that this situation that has arisen here today was a planned thing, and that we are being used. SNCC is in debt. They are in the hole, they are in a rough spot. Well, we are fixing to give them a martyr, and we are fixing to give them a cause.

Well, I want them to know, wherever the SNCCs are today and tonight, that I know I am being used, you ain't fooling me a darn bit. I know that I could not go home and face my people knowing that some of my constituents are tonight fighting on foreign soil to carry on the things that you and I fought for in World War II.

No, sir, we don't need you, Mr. Bond.

And I say to you, gentlemen, I have no compunction whatever about not seating Mr. Bond, because I do not think that he is entitled to his seat because of the assertions he has made and the positions he has taken against the government of the United States.

Thank God we live on the face of the greatest country [fol. 169] on the face of God's green earth, and I could not sleep with myself, I could not stand myself tomorrow morning when I look in the mirror; if every member in this House wanted to seat him, I could not do so.

I realize that we are giving them a cause when we do what we are doing, but that is the path that you and I must take, support the majority report, and let's do what we think is right.

The Speaker: The vote will now be taken. It will take 103 votes to uphold the report.

The Chair recognizes the gentleman from the 70th.

Rep. Floyd: Mr. Speaker, in fairness to Mr. Julian Bond and to the members of this House, I would like to make the following request: That the people that belong to the newsmedia get where they are supposed to be; that the wives and kinfolks and cousins and the Senators and everybody else leave the floor of this House, and no one be allowed to sit in a seat except the members of the General Assembly and that Rule 200 be read.

The Speaker: Read Rule 200.

The Clerk: Rule 200: No member or person shall vote for or attempt to vote for another member on any question or proposition. Violation of this rule shall be deemed to be disorderly behavior and subject to punishment as provided by the Constitution and rules of the House.

[fol. 170] The Speaker: I want to say this. I think in fairness to the parties involved on both sides that counsel will be able to stay in and sit beside them. I meant to state that in my opening remarks, and I think everyone else should leave the floor except those involved.

Shall this resolution now pass?

Any objections?

(No response.)

The Speaker: Hearing none, the main question, all in favor of adopting the resolution, which is supporting the recommendation of the Special Committee, unfavorable to the seating of Mr. Bond, vote aye. Those opposed vote no.

The Clerk will unlock the machine.

All members go to one side or the other.

All members voted? All members voted?

The Clerk will lock the machine, on adoption of the resolution, the Clerk will lock the machine.

On adoption of the resolution, the Ayes, 184; the Nays are 12.

The resolution is adopted.

The Chair recognizes the gentleman from Dougherty.

Rep. Burt: Mr. Speaker, I move that this House do now adjourn until 10:00 o'clock tomorrow morning.

The Speaker: Doorkeepers, close the doors and keep them closed.

[fol. 171] All in favor of the gentleman's motion that this House now adjourn until 10:00 o'clock tomorrow morning say aye.

(Whereupon, there was a chorus of ayes.)

The Speaker: All opposed say no.

(Whereupon, there was a chorus of noes.)

The Speaker: The ayes seem to have it, and the ayes do have it. This House is now adjourned until 10:00 o'clock tomorrow morning.

(Whereupon, the above-entitled hearing was concluded.)

CERTIFICATE

Georgia
Fulton County

I, J. Bruce Welch, being a Notary Public in and for the State of Georgia at Large, do hereby certify that the above and foregoing is a true and complete transcription of my stenographic notes taken at the hereinabove set out time and place and was reduced to typewriting by me personally.

I further certify that I am neither of kin nor counsel to any of the parties hereto, nor financially interested in the matter.

Witness my hand and official seal at Atlanta, Fulton County, Georgia, this the 12th day of January, 1966.

J. Bruce Welch, Notary Public, Georgia State at Large, My Commission Expires Oct. 12, 1968. (Seal).

[fol. 173]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

Civil Action No. 9895

[Title omitted]

ORDER APPOINTING THREE-JUDGE COURT—January 17, 1966

The Honorable Lewis R. Morgan, Chief Judge of the United States District Court for the Northern District of Georgia, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, and, it appearing that one

[File endorsement omitted]

basis for relief urged by the plaintiffs is that the challenged conduct is in violation of an earlier order of the statutory three judge court consisting of the Honorable Griffin B. Bell, United States Circuit Judge, the Honorable Lewis R. Morgan, United States District Judge, and the undersigned, in Toombs, et al. v. Fortson, et al. (N.D. Ga.) 241 F. Supp. 65, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hearby designate myself, Elbert P. Tuttle, United States Circuit Judge, and the Honorable Griffin B. Bell, United States Circuit Judge, to serve with Judge Morgan as members of, and with him to constitute, the said Court to hear and determine the action.

Witness my hand this 17th day of January, 1966.

Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 174]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

Civil Action No. 9895

[Title omitted]

ORDER OF THREE-JUDGE COURT SETTING UP PRE-TRIAL HEARING—January 17, 1966

The motion for interlocutory injunction shall be heard in the District Courtroom in the United States Courthouse, Atlanta, Georgia, at 9:30 A.M. on January 28, 1966.

The parties shall, prior to 12 o'clock Noon, on Friday, January 21st, make every effort to stipulate the facts essential to a determination of the issues in the case. Such stipulation shall be filed in the Clerk's office by 12 o'clock Noon, January 21st.

A pre-trial hearing will be held by one or more of the members of this court in the said courtroom at 9:30 A.M. on Monday, January 24th, to determine the issues to be

[File endorsement omitted]

submitted upon the trial and to prescribe the time for filing trial briefs by the parties.

This 17th day of January, 1966.

Elbert P. Tuttle, Circuit Judge, Griffin B. Bell, Circuit Judge, Lewis R. Morgan, District Judge.

[fol. 174a] Rec'd order for Atty. Gen. 1/17/66, Leroy Elliott

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[fol. 175]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

[Title omitted]

Civil Action No. 9895

MOTION TO STRIKE PARTIES PLAINTIFF FOR LACK OF STANDING

—Filed January 21, 1966

Part One

Now come the Defendants named in the above-styled case and before answering move to strike Dr. Martin Luther King, Jr. as a Party Plaintiff for the following reasons:

(a) Said Plaintiff has failed to state a justiciable case in that he was not qualified to vote in House District tiff and Defendants.

(b) Said Plaintiff is not a proper party in this case even if there was some controversy in that he has no standing with respect to the acts complained of in that he was not quaified to vote in House District Number 136 at any time material to this cause.

Part Two

Now come the Defendants named in the above-styled case and before answering move to strike Mrs. Arel Keyes as a Party Plaintiff for the following reasons:

[File endorsement omitted]

(a) Said Plaintiff has failed to state a justiciable case in that there is no controversy between said Plaintiff and Defendants.

[fol. 176] Wherefore, Defendants pray that

(a) The motion to strike Dr. Martin Luther King, Jr. be inquired into and sustained.

(b) The motion to strike Mrs. Arel Keyes be inquired into and sustained.

Arthur K. Bolton, The Attorney General; William L. Harper, Assistant Attorney General; Alfred L. Evans, Jr., Assistant Attorney General; Peyton S. Hawes, Jr., Assistant Attorney General; Paul L. Hanes, Assistant Attorney General.

132 State Judicial Building Atlanta, Georgia 30334.

[fol. 177] Certificate of Service (omitted in printing).

[fol. 178]

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

Civil Action No. 9895

[Title omitted]

[fol. 179]

STIPULATION OF FACTS—Filed January 21, 1966

It is hereby stipulated, by and between the parties herein, acting through their counsel of record, that the facts hereinafter set forth shall be accepted as true on the trial of this case, and it shall not be necessary to introduce any further evidence with respect thereto. However, either party may introduce relevant evidence not inconsistent herewith. This stipulation does not, however, constitute an agreement as to the relevancy of any fact stipulated.

The facts herein stipulated apply fully to all periods of

[File endorsement omitted]

time in question except where the context or dates stated indicate otherwise.

It is agreed and stipulated that the court may decide all questions of law and fact on the basis of this stipulation and such other evidence as may be introduced.

1.

It is agreed that the figures "1971(2)", as appear on lines six (6) and eight (8) of Paragraph No. 1, be changed to the figures "1971".

2.

It is agreed that the allegations contained in Paragraph No. 3 to the effect that Julian Bond and Mrs. Arel Keyes are Negro citizens of Fulton County, Georgia, House District No. 136, and are registered voters over the age of twenty-one (21) year are correct, and it is further agreed that Julian Bond and Dr. Martin Luther King, Jr., are men and Mrs. Arel Keyes is a woman. As to Dr. Martin Luther King, Jr., it is further stipulated that he was not qualified to vote in House District No. 136 prior to June 16, 1965.

[fol. 180]

3.

As to Paragraph No. 4, first sub-paragraph, it is agreed that Defendants James "Sloppy" Floyd, Wm. J. (Bill) Lee, Ed T. Fulford, J. Terrell Webb, David L. Newton and W. Jones Lane are white males over the age of twenty-one (21) years, are residents of the State of Georgia, and are duly elected and serving members of the House of Representatives of the State of Georgia. No stipulation is made as to the remaining two sentences in the first sub-paragraph of Paragraph No. 4.

As to sub-paragraph 2, Paragraph No. 4, it is agreed that George T. Smith is the duly elected and qualified Speaker of the Georgia House of Representatives, is Chairman of the Rules Committee of said House, and was Chairman of the Special Committee created by House

Resolution No. 7, which Committee was created for the purpose of holding a hearing on petitions challenging and contesting the seating of Representative-Elect Julian Bond from the 136th District.

As to sub-paragraph 3, Paragraph No. 4, it is agreed that Defendant Glenn Ellard is the Clerk of said House.

As to sub-paragraph 4, Paragraph No. 4, it is agreed that Defendant Maddox Hale is the Speaker Pro-Tem of said House.

As to sub-paragraph 5, Paragraph No. 4, it is agreed that David Peeples is Doorkeeper of said House.

[fol. 181] As to sub-paragraph 6, Paragraph No. 4, it is agreed that Defendant Ben W. Fortson, Jr., is the Secretary of the State of Georgia and is charged with the duty of issuing commissions to the members of said House.

It is hereby stipulated that Jack Tyson is the Sheriff of the House of Representatives of the State of Georgia and that he may be considered as a party Defendant in this case.

4.

As to Paragraph No. 5, it is agreed that all Defendants are residents of the State of Georgia, that Defendant Wm. J. (Bill) Lee resides in Clayton County, Georgia, and that all Defendants may be served at the State Capitol, Atlanta, Georgia.

5.

As to Paragraph No. 6, it is agreed that Julian Bond was duly elected to said House on June 16, 1965, and that the Special Democratic Primary Election was held May 5, 1965, but no other stipulation is made concerning said Paragraph.

6.

As to Paragraph No. 7, it is agreed that Mr. Bond received the Democratic nomination, running against one opponent who was also a member of the Negro race; that

Mr. Bond received 1,243 votes, and his opponent, Rev. Howard Creecy, Sr., received 522 votes; that Mr. Bond had Republican opposition in the Special Election held June 16, 1965, and that his opponent at that time was Malcolm J. Dean, also a member of the Negro race, and Mr. Bond received 2,320 votes, and Mr. Dean received 487 [fol. 182] votes, Mr. Bond receiving eighty-two percent (82%) of the total votes cast in said election. It is further agreed that, of approximately 6500 registered voters in the 136th District, 6000 are members of the Negro race.

As to the remainder of Paragraph No. 7, it is agreed that Mrs. Arel Keyes is a constituent of Mr. Bond; that Mrs. Keyes resided in House District No. 136 and voted in both the Primary and Special Elections above referred to, and that in such elections she cast her ballot for Mr. Bond.

7.

As to Paragraph No. 8, it is agreed that on Thursday, January 6, 1966, the Student Non-Violent Coordinating Committee, of which Mr. Bond is a member and an employee, issued a statement critical of American policy with respect to Viet Nam, and with respect to the civil rights of Negroes in the United States, and it is further agreed that Mr. Bond made other statements in addition to these which are set forth in the transcript of the proceedings before the Challenge Committee created by said House and in the tape recordings of his conversation admitted in evidence before such Committee, but Plaintiff does not agree that such evidence was properly admitted. It is agreed that Exhibit A to Exhibit A in the Complaint is a true and correct copy of the statement issued by the Student Non-Violent Coordinating Committee. It is further agreed that the statements made by Mr. Bond were widely reported in the Georgia press and other news media, but no further stipulation is made concerning said Paragraph.

[fol. 183] 8.

As to Paragraph No. 9, it is agreed that on Monday, January 10, 1966, said Secretary of State transmitted his certification that Mr. Bond was the duly elected Representative for House District No. 136 to said House; that five (5) petitions contesting Mr. Bond's right to be seated were filed; that the hearing concerning the seating of Mr. Bond was held pursuant to two (2) such petitions, which are correctly set forth as Exhibits A and B.

It is further agreed that Exhibit E, referred to in the sixth sentence of said Paragraph No. 9, is a true and correct copy of House Rule 198; that seventy-four (74) of the seventy-five (75) members who signed one or both of the petitions attached as Exhibits A and B, remained in the House and voted on House Resolution No. 19.

No further stipulation is made as to said Paragraph No. 9.

9.

As to Paragraph No. 11, it is agreed that the hearing before the Special Committee was held in the Chamber of said House, and that a great number of the members of the House remained in the Chamber during said hearing as well as the general public.

It is further agreed that the transcript of the proceedings attached as Exhibit D, with the exception of minor errors which will be called to the Court's attention, is a true and correct transcription of the proceedings before the House, with the exception of the radio tapes, which have been transcribed and are attached hereto.

[fol. 184] 10.

As to Paragraphs No. 18, 20, 22, 24, 26, 28, 30, 32, 34, 36 and 38, it is agreed that all of said Paragraphs shall read as follows: "Plaintiffs re-allege Paragraphs No. 1 through 13, inclusive, and Paragraph No. 16, in their entirety."

11.

As to Paragraphs No. 29, 37 and 39, it is agreed that the words and figures "House Rule 19", shall read "House Resolution 19".

12.

It is agreed that Exhibit A and the Exhibit A to Exhibit A, Exhibits B, C, D, E, F, G and H are true and correct copies of that which they purport to represent; that Exhibit F is a true and correct copy of the Roll Call Vote on House Resolution 19, and that Exhibit H is a true and correct copy of the text of a telegram which was sent to the persons therein designated.

13.

It is agreed that Exhibit One attached hereto is a true and correct copy of the Majority Report filed by the Special Challenge Committee of said House, and that Exhibit Two attached hereto is a correct copy of the Minority Report filed by said Committee of said House.

14.

It is agreed that eight (8) members of the Negro race were elected to the Georgia House of Representatives in [fol. 185] the Special Election hereinbefore set out, and that their names and Districts from which they were elected are as follows:

John Hood	District 124
Rev. J. D. Grier, Jr.	District 132
William H. Alexander	District 133
J. C. Daugherty	District 134
Benjamin D. Brown	District 135
Julian Bond	District 136
Grace T. Hamilton	District 137
Albert W. Thompson	District 110

It is further agreed that, with the exception of Mr. Bond, all of the above named members of the Negro race were seated in and are now serving in said House. It is further agreed that the Georgia Senate includes two (2) members of the Negro race who were duly elected and seated in that body.

It is further agreed that two (2) members of the Special Challenge Committee were members of the Negro race, and that the other members of said Committee were members of the white race, and it is agreed that two (2) members of the Negro race and one (1) member of the white race, a Representative from Fulton County, Georgia, signed the Minority Report hereinbefore set out.

15.

It is agreed that parties hereto will provide notice to the opposing party of any witness called, and that such notice shall be given at least by ten o'clock A. M., January 27, 1966.

16.

It is agreed that Exhibit Three, attached hereto, is a true and correct transcript of the first taped conversation [fol. 186] played before the Special Challenge Committee of said House, and further, that Exhibit Four, attached hereto, is a true and correct transcript of the second taped conversation played before said Committee in said House. This stipulation does not preclude the actual introduction of the taped conversation played before the Special Challenge Committee of the House of Representatives.

17.

It is hereby agreed that Exhibit Five, attached hereto, is a true and correct copy of the roster of those elected to the General Assembly of Georgia for the January 1966 Session, as prepared by Ben W. Fortson, Jr., Secretary

of State, and that the information contained in Exhibit Five is true and correct.

Respectfully submitted,

Arthur K. Bolton, Attorney General; William L. Harper, Assistant Attorney General; Alfred L. Evans, Jr., Assistant Attorney General; Peyton S. Hawes, Jr., Assistant Attorney General; Paul L. Hanes, Assistant Attorney General, Attorneys for defendants.

P. O. Address: 132 Judicial Building, 40 Capitol Square, Atlanta, Georgia, 30334; 525-0401.

Howard Moore, Jr., Attorney for Plaintiffs.
859½ Hunter St., S.W., Atlanta, Georgia.

[fol. 189]

PLAINTIFFS' EXHIBIT 3

Case No. 9895—Admitted Jan. 28, 1966

First Part

TRANSCRIPT OF PROTESTANT'S EXHIBIT No. 1

Q. "... [P]ersons in the Civil Rights movement avoid the draft in order to continue their work to assure the rights of Negroes . . .", etc. That's what I'm quoting from the AP story, so what would be your reaction? Julian, this is Ed Spivia. I was there at the Press Conference called by John Lewis—

A. Uh, huh.

Q. And Lewis was questioned by newsmen as to whether or not you endorse this release today, and I would like to ask that question to you now. Do you endorse the release made by the SNCC Group today?

A. Yes, I do.

Q. Would you say that again, please?

A. I said, "Yes, I do."

Q. Now, could you qualify, Julian, why specifically you do endorse it and what points?

A. Why, I endorse it, first, because I like to think of myself as a pacifist and one who opposes that war and any other war and eager and anxious to encourage people not to partcipate in it for any reason that they choose; and secondly, I agree with this statement because of the reason set forth in it—because I think it is sorta hypocritical for us to maintain that we are fighting for liberty in other places and we are not guaranteeing liberty to citizens inside the continental United States.

Q. Julian, do you feel that you can endorse this statement and effectively set out the duties of your office that you have been elected to?

A. Well, the qualifications for being a legislator in Georgia—that you be over 21 years old, be a resident of the State for more than two years and not be a member of the Communist Party, and I meet all of those qualifications.

Q. Julian,—?

[fol. 189a] A. And, uh—. Yeah?

Q. I'm not speaking of it in that manner. You have an oath to take come Monday. Will you be able to take this oath with a clear conscience and endorse this statement?

A. What does the oath require? That you uphold the Constitution of the State of Georgia and the Constitution of the United States of America, right?

Reporter: That's correct.

A. Right, Well, I don't see anything in this statement that conflicts with that.

Q. Now, you started to say, Julian, to start off with before you were interrupted about the oath, what the oath requires, and why you feel that a—if you could just sum all that up in a statement.

A. Well, I said the qualifications—not speaking about the oath—but the qualifications for being a State Representative in Georgia require that you be at least 21 years old, a two-year, I think, resident of the district from which

you are elected, and not be a member of the Communist Party, and I meet all of those qualifications, and consider myself just as qualified as any other member of the Georgia House of Representatives, and just as able, if not more able, to perform my duties as are the other members.

Q. Well now, of course according to what you have just given us, and I'm sure that's quite correct—that much of it is spelled out. But you don't feel that there are certain, perhaps moral obligations that are implied in taking over such an office as you expect to do which might be in variance with this view you've just stated?

A. Well, I think that the fact that the United States Government fights a war in Viet Nam, I don't think that I as a second class citizen of the United States have a requirement to support that war. I think my responsibility is to oppose things that I think are wrong if they are in Viet Nam or New York, or Chicago, or Atlanta, or wherever.

Q. Julian, the only thing that's keeping the group that has made this statement from being in treason is the techni-
[fol. 189b] cality that we aren't at war. If we should become engaged in war and a declaration of war be declared, would you still stand by this statement?

A. Well, I don't know. That puts a different light on it, but one of the many reasons that I oppose the war in Viet Nam is because it seems to me that if we are at war and we are at war declared, not by Congress as wars are supposed to be declared, but war declared by President Johnson, and there seems to me that there is something wrong with that sort of a situation and that is one of the many reason why I oppose that war.

Q. In other words, you are willing to stand by this as long as it doesn't cost you anything, but if it's going to cost you—you are going to be held in treason—then you can't stand by it.

A. Well, I have to think about it again. I don't know. I don't know if I'm—if I—you know, if I'm strong enough to place myself in a position where I'd be guilty of treason.

Right now, I stand by it, and—if it were treasonable by law I'd have to think about it again.

Q. Well, you were elected by all the people to represent those people. Do you feel that all the folks that voted for you have these same views? Or the majority of them?

A. No, I don't know what the majority opinion is among my constituents about the war in Viet Nam. I imagine and this is without knowing, I imagine that they oppose it, because I remember being at the bus station in Atlanta and seeing a bus load of draftees getting ready to leave for Fort Benning, I think, and a Negro youngster jumped off and said to the Sergeant who was loading them on the bus, "You didn't want us to go to school with you, you didn't want us to sit at lunch counters with you and now you want us to go overseas and fight and die with you." And this kid wasn't intending to go, but they got him back on the bus and he went, and I think that without knowing, without having taken a poll, that that would be an opinion [fol. 189c] among a great many people that I represent.

Q. Now, Julian, you don't feel that apparently from what you stated as other top officials have stated, Governor Sanders among them, who have actually gone over to Viet Nam and talked to all levels of people over there from the top military down unto the lowliest peasant of Viet Nam and also of course to their own fighting men, that if we do not stop Communism there that it is just a question of where will we stop it next, and that eventually that they would come over and take over this country. This is their avowed aim, and that if they did I don't think there is very much doubt in many peoples' minds but not none of us including yourself who apparently disagree with our current policy would be able to voice such an expression of disagreement, and, in addition, to actively advocate avoidance of the draft—this still does not—you don't feel would change your mind in this area?

A. Oh, no, I'm not taking a stand against stopping World Communism, and I'm not taking a stand in favor of the Viet Cong. What I'm saying that is, first, that I don't

believe in that war. That particular war. I'm against all war. I'm against that war in particular, and I don't think people ought to participate in it. Because I'm against war, I'm against the draft. I think that other countries in the World get along without a draft—England is one—and I don't see why we couldn't, too.

Q. You don't think this is what would be necessary in order to fight this war in order to stop Communism from going any further?

A. Well, I'm not convinced that that is really what's going on, but I'm not prepared to argue it. You see, I don't want to say anything about that. I'm not convinced that we are really stopping International Communism. I like—not completely—but I like fairly well, the life I live now. You know, I don't want too many abrupt changes in a direction I don't like take place, but I'm not about to justify that war, because it's stopping International Com- [fol. 189d] munism, or whatever—you know, I just happen to have a basic disagreement with wars for whatever reason they are fought—

Q. Don't you—

A. . . . [F]ought to stop International Communism, to promote International Communism, or for whatever reason. I oppose the Viet Cong fighting in Viet Nam as much as I oppose the United States fighting in Viet Nam. I happen to live in the United States. If I lived in North Viet Nam I might not have the same sort of freedom of expression, but it happens that I live here—not there.

Q. Julian, this is Mike. Dick, let me say something to you. I happened to overhear those questions, and I don't think you should use his answers to them. Number one, because Senators and Congressmen who have taken the same oath as he will have to take only on a much larger scale have said the Administration is wrong, so I don't see how you can justify asking him questions about that, and I don't think they should be used.

A. Thank you. Well, it is sorta unfair to suggest that it is my opposition to the war—my opposition to the war

is somehow different from the opposition say—uh, of Senator Russell, a little while ago—not presently—but a little while ago, who said he didn't think American boys should be losing their lives to fight in Viet Nam. You see, and if I'm approaching treason in my statements, then perhaps he is, also.

Q. Well, I realize that you wouldn't come out and say that, you know, as long as a newsman is questioning you. You don't want to take the position of being adamantly opposed to questions, so I thought I'd break in and say that.

A. Thank you.

Mike Jones: Okay.

Dick Grey: Of course, Mike, you realize all those questions weren't mine—so anyway, I do take into consideration and have from the start—this wasn't obvious, but I should . . .

[fol. 189e]

PLAINTIFFS' EXHIBIT 4

Second Part

TRANSCRIPT OF PROTESTANT'S EXHIBIT No. 2

(Interview with Bond in the hallway immediately after other members were given oath and he was not)

Mr. Bond: Please Committee Members, ask me the questions.

Spokesman: Please repeat.

A. . . . [T]he message to my constituents, it goes:

"There has been during the past few days a great deal of public discussion about me, my right to serve in the Georgia House of Representatives, and my right to speak my mind. I stand here as a citizen elected by other citizens to a seat in the Georgia House of Representatives. I stand before you today charged with entering into public discussion on matters of National interest. I hesitate to offer

explanations for my actions or deeds where no charge has been levied against me other than the charge that I have chosen to speak my mind and no explanation is called for, for no member of this House, has ever, to my knowledge, been called upon to explain his public statements for public postures as a prerequisite to admission to that Body. I therefore, offer to my constituents a statement of my views. I have not counselled burning draft cards, nor have I burned mine. I have suggested that congressionally outlined alternatives to military service be extended to building democracy at home. The posture of my life for the past five years has been calculated to give Negroes the ability to participate in formulation of public policies. The fact of my election to public office does not lessen my duty or desire to express my opinions even when they differ from those held by others. As to the current controversy because of convictions that I have arrived at through examination of my conscience I have decided I personally cannot participate in war."

[fol. 189f] I stand here with intentions to take an oath —that oath they just took in there—that will dispel any doubts about my convictions or loyalty.

Q. Do you think the Committee will clear you, Representative Bond, for your seat? Are you confident of this?

A. I don't know what they will do.

Q. Do you still stand by the SNCC statement that you endorsed earlier?

A. I do.

Q. What do you think the Committee will do now knowing the tenor of this legislative group? Do you think you will be seated? Are you confident of it?

A. I have—listen, 82 percent of the people who voted in the election in my district voted for me, and more people voted on election day in my district proportionate to the numbers of voters than voted in any other district in any place in this whole State, and those people elected me to represent them there, and I'm going to represent them.

Q. If you are defeated, what will you do? What action will you take, Mr. Bond, if you are not seated?

A. I don't know. I'm—it's not a case of being not seated—I'm going to be seated. I mean it's not a case—

Q. Will you go to court?

A. Well, I've got my lawyer here.

Q. Will you give us a statement on that, Sir?

A. We intend to fight in every form that's available. We intend to fight before the Rules Committee. We take the position that the Clerk of the House of Representatives has no authority to request a duly elected member of the House of Representatives to step aside. That the Clerk's authority is limited solely to the organization of the House—not to the composition of the House, and we think that's a meaningful distinction and we are going to push it. We also take the position that the Rules Committee has no [fol. 189g] authority to inquire into a member's views—his attitudes, that not only do you have to get elected in Georgia and be a citizen of the State, a resident in the county but now you have to have the correct attitude. We resent that. We will go into court and I am authorized by persons from his district to file suit if need be. I am authorized by Mr. Bond to proceed before the Rules Committee if need be. We will proceed most vigorously and fight in every form that's available.

Q. Mr. Bond, was this a deliberate move by SNCC to make a martyr out of you and create a National issue?

A. Let me introduce you to Mr. Forman who is the Executive Secretary of SNCC. Let me say something else before I introduce him. Two years ago—see I came up here—right upstairs there to see if I could get a chance to see what goes on in this Body and they put me out because of the color of my skin, and we came down here right out in this hall and somebody who said he was a member of this House pushed and shoved me and punched Forman in the chest, and now they put me out again because they say they don't like my attitude. But anyway, I just wanted to say that.

Q. What do you have to say about it, Mr. Forman?

A. I just think it's utterly outragious that a man who's elected by 80 percent of the voters in his district cannot now sit duly elected. I think that it's a deprivation of those constitutional rights. I think that it is a racist act because the people from his district are Negroes and that he's a Negro, and that now it is not even a question, the Sixty-Five Civil Rights Act is meaningless if you give Negroes the right to vote and if they in fact elect who they want to elect, and then a racist legislature like the Georgia Legislature will not allow a man to take his oath of office. And he's absolutely right, two years ago we stood on this same wing—right here at that door when a Legislator pushed him and he shoved me and punched me in my chest and I just think that, you know, history has to be vindi-
[fol. 189h] cated, the Negro has to have the right to vote and to participate in democratic elections and have their representative seated. The time for attitudes is over and that Georgia is moving more toward a totalitarian state rather than moving toward democracy. Now the question was asked, what will we do? We have a constitutional right to protest and it is hoped that the people in this district, those students over at the campuses will come down and support him and maybe we might even have to have a boycott on Georgia.

Q. Are you going to demonstrate at the Capitol?

A. No, we don't want a demonstration. We want this man to be seated. We want the Georgia House to seat him because he was duly elected by the people in that district, and he has a right to be seated—

Q. Will you stand by the statement of SNCC earlier and you do not back off from this?

A. That's right.

Q. Mr. Moore, what do you think will happen before this Committee?

A. I think that the Committee is going to try to take some type of compromise and come out with a censure of

Mr. Bond which we find reprehensible. We think that there should be morality in politics and that there should be morality in proceedings to determine his eligibility to sit in the House.

Q. You want him cleared?

A. Yes, we want him cleared. If there is anything for him to be cleared. But as it stands there is nothing for him to be cleared except for the fact that some people don't like his attitude. You can't clear somebody's else's mind about your attitude.

Q. Mr. Bond, what exactly is your attitude?

A. I just read a statement of my attitude that I explained to my constituents who I happen to think are the people who can demand an explanation of my attitude and I have circulated that explanation of my attitude to them—about 5,000 copies.

Q. Do you think it's proper for an elected official to [fol. 189i] advocate the violation of federal or state laws?

A. Well, I don't know. I'm not a lawyer. I know this elected official has not done so.

Q. Mr. Bond—

Interruption: The issues are the right of dissent. People —legislatures all over this Congress— Yesterday, Mr. Bond received eight telegrams from the Massachusetts Legislature supporting his right to have to dissent. The people in the Congress of the United States who will constantly be dissenting from the policies of the Administration, and that's the fundamental issue. Whether or not a man elected to a Georgia Legislature has a right to disagree with some members of that Legislature and if he doesn't have that right, then why should he be elected?

Let's go.

Thank you very much.

I take it again Mr. Moore that you object to the submission of that evidence on the same ground that you objected to the first one before this one and before the first notes. You renew that objection?

A. Yes, sir.

[fol. 189j] DEFENDANTS' EXHIBIT 1

Case No. 9895

Admitted Jan 28 1966

STATE OF GEORGIA
COUNTY OF FULTON

Personally appeared before me, an officer duly authorized to administer oaths, Leon G. Hay, Chief Registrar of Fulton County, who, after being sworn, deposes and says:

That he is Chief Registrar for Fulton County, Georgia, vested by law with the custody of the voting registration records of said County, and that since prior to June 1, 1965, and until January 24, 1966, the records in his possession showed that Dr. Martin Luther King, Jr., was a qualified voter in the 132nd House District in Fulton County, Georgia, and that on January 24, 1966, Dr. Martin Luther King, Jr., transferred his voting residence to the 136th House District of Fulton County, Georgia.

/s/ LEON G. HAY
LEON G. HAY, Chief Registrar,
Fulton County, Georgia

Sworn to and subscribed before
me this 28th day of January 1966.

/s/ NORMA HAYGOOD
Notary Public
My commission expires 3-18-69.

(Seal)

[fol. 189k] Clerk's Certificate to foregoing exhibits (omitted in printing).

[fol. 195]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 9895

[Title omitted]

DEFENDANTS' MOTION TO DISMISS—Filed January 24, 1966

Come now the Defendants, and before answering and pursuant to Rule 12 of the Federal Rules of Civil Procedure, and wthout waiving their Motion to Strike Parties heretofore filed, move the Court as follows:

1.

Defendants move that the Complaint be dismissed on the ground that the Court lacks jurisdiction over the subject matter in that the Complaint shows on its face that the action complained of was a determination by the House of Representatives of the State of Georgia that Plaintiff Julian Bond was not qualified to be seated as a member of said legislative body, and appearing further from the body of the complaint and the attachments thereto that the federal questions asserted are unsubstantial. The determination of its members' qualifications is a matter which State law vests within the sole and exclusive jurisdiction of the House of Representatives, and, because of the absence of any substantial question concerning deprivation of federally protected rights, such determination is not subject to judicial review.

2.

Defendants move that the Complaint be dismissed on the ground that it fails to state a justiciable claim against [fol. 196] the defendants upon which relief can be granted.

[File endorsement omitted]

3.

Defendants move to dismiss the First Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that said cause fails to allege in what way Article III, Section VII, Paragraph I of the Georgia Constitution is vague or conflicts with the First or Fourteenth Amendments to the United States Constitution.

4.

Defendants move to dismiss the Second Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that the Complaint shows on its face that Mr. Bond was not and could not be expelled from the Georgia House of Representatives pursuant to Article III, Section VII, Paragraph I of the Constitution of Georgia.

5.

Defendants move to dismiss the Third Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted for the reasons set forth in Paragraph 3 of this motion.

6.

Defendants move to dismiss the Fourth Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that said cause fails to allege in any manner facts showing that Rule 61 of the House of Representatives was unconstitutionally administered against Representative-elect Bond, but rather that the Complaint shows on its face that said Rule was properly administered against him.

[fol. 197]

7.

Defendants move to dismiss the Fifth Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that said Cause does

not allege any deprivation of rights guaranteed to the Plaintiff Bond, and does not allege any facts showing that any rights of any other Plaintiff or class have been violated, and that said cause fails to show that any federally protected rights have been violated.

8.

Defendants move to dismiss the Sixth Cause of Action in the Complaint for failure to state a claim upon which relief can be granted as the Complaint shows on its face that Representative-elect Bond has no standing to challenge the oath of office in that he did not possess the qualifications of office, and that he has waived any objections to the oath of office by offering to take said oath.

9.

Defendants move to dismiss the Seventh Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that this Court has no jurisdiction under the Guaranty Clause of the United States Constitution.

10.

Defendants move to dismiss the Eighth Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that the Complaint shows on its face that House Resolution 19 is not and cannot constitute a Bill of Attainder or ex post facto law.

[fol. 198]

11.

Defendants move to dismiss the Ninth Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that the Fifth Amendment of the United States Constitution applies only to the federal government, and that the Complaint shows upon its face that the provisions of the Fifth Amendment do not

and cannot apply in any way to the refusal to seat Representative-elect Bond.

12.

Defendants move to dismiss the Tenth Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that the Sixth Amendment to the United States Constitution applies only to the federal government, and that the Complaint shows that Representative-elect Bond was not deprived of any rights contained in said Sixth Amendment.

13.

Defendants move to dismiss the Eleventh Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that the Complaint shows that Representative-elect Bond was deprived of no rights under the Privileges and Immunities Clause of the Fourteenth Amendment or the Free Assembly portion of the First Amendment.

14.

Defendants move to dismiss the Twelfth Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that the Complaint shows that Representative-elect Bond was afforded due process of law in the proceedings in the Georgia House of Representatives.

[fol. 199]

15.

Defendants move to dismiss the Thirteenth Cause of Action in the Complaint in its entirety for failure to state a claim upon which relief can be granted in that the Complaint does not show that the Plaintiff Keyes has ever been deprived of the right to vote, and that Paragraph 7 of the Complaint shows that she in fact did vote for Representative-elect Bond in both the 1965 Primary and General election.

Wherefore, Defendants pray that this Motion be inquired into and sustained, and that the Complaint be dismissed with costs of Court assessed against the Plaintiffs.

Arthur K. Bolton, The Attorney General, William L. Harper, Assistant Attorney General, Alfred H. Evans, Jr., Assistant Attorney General, Peyton S. Hawes, Jr., Assistant Attorney General, Paul L. Hanes, Assistant Attorney General.

Address: 132 State Judicial Bldg., Atlanta, Georgia 30334.

[fol. 200] Certificate of Service (omitted in printing).

[fol. 221]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9895

[Title omitted]

ANSWER—Filed January 28, 1966

Come Now the Defendants in the above-styled case and without waiving their motions heretofore filed, answer the Plaintiffs' petition as follows:

1.

Defendants deny Paragraph 1 and each and every subparagraph thereof of the Plaintiffs' complaint.

2.

Defendants deny Paragraph 2 and each and every subparagraph thereof of the Plaintiffs' complaint.

[File endorsement omitted]

3.

Defendants admit the allegations contained in Paragraph 3 except that it is specifically denied that Dr. Martin Luther King, Jr. is registered to vote in House District 136.

4.

Defendants admit the allegations of Paragraph 4 except that it is specifically denied that this action was brought against the Defendants as representative of all other members of the House of Representatives of the State of Georgia [fol. 222] and that there are common questions of law and fact involved.

5.

Defendants admit the allegations contained in paragraph 5.

6.

Defendants admit that Plaintiff Bond was duly elected to the House of Representatives, but specifically deny that said election was held pursuant to an order of this Court.

7.

Defendants admit the allegations of Paragraph 7 except that it is specifically denied that Dr. Martin Luther King, Jr.'s voting residence was transferred to House District 136, and it is specifically denied that the Plaintiffs or any members of their class are unrepresented in the House of Representatives.

8.

Defendants admit the allegations of Paragraph 8 but move to physically delete and expunge the last sentence of said paragraph on the ground that said allegation is irrelevant, immaterial and highly inflammatory and made solely for the purpose of prejudicing the court.

9.

Defendants admit the allegations of Paragraph 9 except that it is denied that the Plaintiff Bond was tried by the House of Representatives as that term is commonly used, and it is denied that House Rule 198 has any bearing on the issues in this case, and Defendants neither admit nor deny how any member of the Special Committee voted in that said committee in that said vote was in executive session.

10.

Defendants admit the allegations contained in Paragraph 10.

[fol. 223]

11.

Defendants admit the allegations of Paragraph 11 but deny that the Plaintiff Bond "was tried solely for making statements prior to his being seated."

12.

Defendants deny the allegations contained in Paragraph 12 of the complaint but admit that a hearing was held in the House of Representatives pursuant to petitions filed and attached to the complaint as exhibits.

13.

Defendants deny as alleged the allegations in Paragraph 13.

14.

Defendants deny as alleged the allegations in Paragraph 14.

15.

As alleged, no answer is required to this paragraph.

16.

Defendants neither admit nor deny the allegations of Paragraph 16.

17.

Defendants deny the allegations contained in Paragraph 17.

18.

As alleged, no answer is required to this paragraph.

19.

Defendants deny the allegations contained in Paragraph 19.

20.

As alleged, no answer is required to this paragraph.

[fol. 224]

21.

Defendants deny the allegations contained in Paragraph 21.

22.

As alleged, no answer is required to this paragraph.

23.

Defendants deny the allegations contained in Paragraph 23.

24.

As alleged, no answer is required to this paragraph.

25.

Defendants deny the allegations contained in Paragraph 25.

26.

As alleged, no answer is required to this paragraph.

27.

Defendants deny the allegations contained in Paragraph 27.

28.

As alleged, no answer is required to this paragraph.

29.

Defendants deny the allegations contained in Paragraph 29.

30.

As alleged, no answer is required to this paragraph.

31.

Defendants deny the allegations contained in Paragraph 31.

32.

As alleged, no answer is required to this paragraph.

33.

Defendants deny the allegations contained in Paragraph 33.

[fol. 225] 34.

As alleged, no answer is required to this paragraph.

35.

Defendants deny the allegations contained in Paragraph 35.

36.

As alleged, no answer is required to this paragraph.

37.

Defendants deny the allegations contained in Paragraph 37.

38.

As alleged, no answer is required to this paragraph.

39.

Defendants deny the allegations contained in Paragraph 39.

40.

Defendants deny the allegations contained in Paragraph 40.

41.

Defendants deny the allegations contained in Paragraph 41.

Wherefore, having fully answered Defendants pray that they have verdict and judgment in this action and their cost of court.

Arthur K. Bolton, The Attorney General, William L. Harper, Assistant Attorney General, Alfred L. Evans, Jr., Assistant Attorney General, Peyton S. Hawes, Jr., Assistant Attorney General.

Paul L. Hanes, Assistant Attorney General, 132 State Judicial Building, Atlanta, Georgia 30334.

[fol. 226] *Duly sworn to by Geo. G. Smith, jurat omitted in printing.*

[fol. 227] Certificate of Service (omitted in printing).

[fol. 232]

IN UNITED STATES DISTRICT COURT

February 1, 1966

[Stamp—Filed in Clerk's Office—Feb 3 1966—Claude L. Goza, Clerk—By: hdr, Deputy Clerk]

No. C. A. 9895

Honorable Ben W. Fortson
Secretary of State of Georgia
State Capitol Building
Atlanta, Georgia

Dear Mr. Fortson:

I am instructed by Representative-elect Julian Bond, 823 Drummond Street, S.W., Atlanta, Georgia, to notify you that Mr. Bond has qualified as a candidate in the special election to be held on February 23, 1966 to fill the alleged vacancy in House District 136, Fulton County, Georgia, under protest. Mr. Bond reserves the right to recover the qualifying fee which he has posted in the amount of Five Hundred Dollars and such other expenses as are necessary and incidental to qualifying and winning election in the above mentioned special election. Mr. Bond, also, reserves the right to avail himself of such other remedies, legal and equitable, as are available or as shall become available to save him and his constituents harmless as the results of his and their participation in said election.

Your attention is called to the case of *Bond, et al.* v. *Floyd, et al.*, Civil Action No. 9895 now pending in The United States District Court for the Northern District of Georgia, Atlanta Division.

Copies of this letter are being mailed and lodged with The Ordinary of Fulton County, Georgia, The Attorney

General of The State of Georgia, and The Clerk of The United States District Court.

[fol. 233] Sincerely yours,

" /s/ Howard Moore, Jr.
Attorney for Representative-Elect from the 136th House District, Julian Bond.

[fol. 234]

In the United States District Court

For the Northern District of Georgia

Atlanta Division

Civil Action No. 9895

Julian Bond, Dr. Martin Luther King, Jr., and Mrs. Arel Keyes, for themselves jointly and severally, and for all other similarly situated, Plaintiffs,

v.

James "Sloppy" Floyd, William J. "Bill" Lee, Ed T. Fulford, J. Terrell Webb, W. Jones Lane, and David L. Newton, individually and as members of the House of Representatives of the State of Georgia and as Representatives of the class of citizens who are presently serving as members of the House of Representatives of the State of Georgia; George T. Smith, individually and as Speaker of the House of Representatives of the State of Georgia and as Chairman of the Rules Committee of the House of Representatives of the State of Georgia and as Chairman of the Challenge Committee appointed to consider the seating of Julian Bond; Glenn W. Ellard, individually and as Clerk of the House of Representatives of the State of Georgia; Maddox J.

HALE, individually and as Speaker Pro-Tem of the House of Representatives of the State of Georgia; ELMORE C. THRASH, individually and as Messenger of the House of Representatives of the State of Georgia; DAVID PEEPLES, individually and as Doorkeeper of the House of Representatives of the State of Georgia; and BEN W. FORTSON, individually and as Secretary of State of the State of Georgia; and JACK TYSON, individually and as Sheriff of the House of Representatives of the State of Georgia, Defendants.

Before TUTTLE and BELL, Circuit Judges, and MORGAN, District Judge.

[fol. 235] BELL, Circuit Judge and MORGAN, District Judge:

OPINION AND ORDER—February 10, 1966

Mr. Bond, one of the plaintiffs in this matter and a Negro, was refused his seat as a member of the House of Representatives of the General Assembly of Georgia. He was a Representative-elect, having been duly elected by the voters of House District No. 136 for the session of the General Assembly commencing January 10, 1966. This was a special election for a one year term made necessary by the reapportionment decision of this court. *Toombs* v. *Fortson*, N.D., Ga., 1965, 241 F.Supp. 65.

On the first day of the session, at which time Mr. Bond and other members of the House were to take the oath of office, Mr. Bond was asked to step aside because of challenges to his qualifications having been filed by seventy-five of the two-hundred-five members of the House. After the other members were sworn, including seven Negro representatives, petitions protesting the seating of Representative-Elect Bond were referred by the Speaker of the House to a special committee designated to hear the contest. This committee, after a hearing, recommended that he not be seated. This recommendation was accepted by

the House and he was denied his seat by a vote of one hundred eighty-four to twelve.

Dr. King and Mrs. Keyes, the other plaintiffs, seek along with Mr. Bond to represent the citizens and voters of House District No. 136 as a class, and it is affirmatively alleged that they are Negro citizens of House District No. 136 and that they are registered voters. They allege that there are common questions of law and fact affecting the civil rights of Negroes to vote and to have members of their race represent them in the House of Representatives of the State of Georgia. It is undisputed that Dr. King and Mrs. Keyes are residents of the district, but it is also undisputed [fol. 236] that Dr. King is not registered to vote in the district but in the House District No. 132.

The defendants are the Speaker of the House, the Speaker Pro-Tem, several members of the House representing the membership, certain officers of the House, and the Secretary of State of the State of Georgia. Jurisdiction for declaratory and injunctive relief is asserted under 28 USCA, §§ 1331, 1343(3), 1343(4), and 2201; and 42 USCA, §§ 1971(d), 1983, and 1988. Three-Judge District Court jurisdiction was premised on 28 USCA, § 2281 by a claim that the provision of the Georgia Constitution which permits the members of the House to judge the qualifications of its members, and House Rule 61 which embodies the same provision are unconstitutionally vague, or were unconstitutionally administered with respect to Mr. Bond.

The additional causes of action set forth in the complaint were refined by briefs into claims that Mr. Bond was barred from membership because he was a Negro; that the action of the House denied him his First Amendment right to free speech; that he was denied procedural due process as guaranteed by the due process clause of the Fourteenth Amendment; that he was denied substantive due process in that there was no rational basis for the action of the House; that the House resolution barring Mr. Bond constituted an *ex post facto* law and a bill of attainder; and

that the House action deprived the residents of the House District No. 136 of a republican form of government, equal protection of the law under the Fourteenth Amendment, and the right as Negroes under the Fifteenth Amendment to vote. The prayer is that defendants be enjoined from excluding Mr. Bond from membership in the House.

The defendants, by motion, have denied the jurisdiction of the court. Additionally, in the alternative, they have [fol. 237] moved to dismiss Dr. King and Mrs. Keyes as plaintiffs. They have also answered the complaint. It was stipulated that a final judgment might be rendered on the pleadings, the stipulated facts and such other evidence as was introduced on the hearing of this matter. We thus proceed to final disposition.

The facts which gave rise to the challenge to Mr. Bond stem from a statement issued on January 6, 1966 by the Student Non-violent Coordinating Committee, an organization active in the civil rights field. Mr. Bond is and was Communications Director of this organization. After the statement was issued, Mr. Bond, upon inquiry, advised the news media that he supported the statement in its entirety. He added that he admired the courage of persons who burned their draft cards; that he was a pacifist who was eager and anxious to encourage people not to participate in the war in Viet Nam for any reason that they might choose; and said that as a second class citizen he did not feel that he should be required to support the war in Viet Nam.

The SNNC statement follows in full:

> "The Student Nonviolent Coordinating Committee has a right and a responsibility to dissent with United States foreign policy on an issue when it sees fit. The Student Nonviolent Coordinating Committee now states its oppostion to United States' involvement in Viet Nam on these grounds:

"We believe the United States government has been deceptive in its claims of concern for freedom of the Vietnamese people, just as the government has been deceptive in claiming concern for the freedom of colored people in such other countries as the Dominican Republic, the Congo, South Africa, Rhodesia and in the United States itself.

"We, the Student Nonviolent Coordinating Committee, have been involved in the black people's struggle for liberation and self-determination in this country [fol. 238] for the past five years. Our work, particularly in the South, has taught us that the United States government has never guaranteed the freedom of oppressed citizens, and is not yet truly determined to end the rule of terror and oppression within its own borders.

"We ourselves have often been victims of violence and confinement executed by United States government officials. We recall the numerous persons who have been murdered in the South because of their efforts to secure their civil and human rights, and whose murderers have been allowed to escape penalty for their crimes.

"The murder of Samuel Young in Tuskegee, Ala., is no different than the murder of peasants in Viet Nam, for both Young and the Vietnamese sought, and are seeking, to secure the rights guaranteed them by law. In each case the United States government bears a great part of the responsibility for these deaths.

"Samuel Young was murdered because United States law is not being enforced. Vietnamese are murdered because the United States is pursuing an aggressive policy in violation of international law. The United States is no respecter of persons or law when such persons or laws run counter to its needs and desires.

"We recall the indifference, suspicion and outright hostility with which our reports of violence have been met in the past by government officials.

"We know that for the most part, elections in this country, in the North as well as the South, are not free. We have seen that the 1965 Voting Rights Act and the 1964 Civil Rights Act have not yet been implemented with full federal power and sincerity.

"We question, then, the ability and even the desire of the United States government to guarantee free elections abroad. We maintain that our country's cry of 'preserve freedom in the world' is a hypocritical mask behind which it squashes liberation movements which are not bound, and refuse to be bound, by the expediencies of United States cold war policies.

"We are in sympathy with, and support, the men in this country who are unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Viet Nam in the [fol. 239] name of the 'freedom' we find so false in this country.

"We recoil with horror at the inconsistency of a supposedly 'free' society where responsibility to freedom is equated with the responsibility to lend oneself to military aggression. We take note of the fact that 16 percent of the draftees from this country are Negroes called on to stifle the liberation of Viet Nam, to preserve a 'democracy' which does not exist for them at home.

"We ask, where is the draft for the freedom fight in the United States?

"We therefore encourage those Americans who prefer to use their energy in building democratic forms within this country. We believe that work in the civil rights movement and with other human relations organizations is a valid alternative to the draft. We urge all Americans to seek this alternative, knowing full well that it may cost their lives—as painfully as in Viet Nam."

On the same day a newspaper reporter asked Mr. Bond for his views on the subject of the burning of draft cards. He stated that he would not burn his own but admired the courage of those who did.

During a taped interview with a representative of the media, Mr. Bond, after endorsing the SNCC statement was asked why he endorsed it, and his answer was as follows:

> "Why, I endorse it, first, because I like to think of myself as a pacifist and one who opposes that war and any other war and eager and anxious to encourage people not to participate in it for any reason that they choose; and secondly, I agree with this statement because of the reason set forth in it—because I think it is sorta hypocritical for us to maintain that we are fighting for liberty in other places and we are not guaranteeing liberty to citizens inside the continental United States."

When asked if he thought his views were at variance with the duties that might be required of him as a Representative in the House of Representatives of the State of Georgia, Mr. Bond replied:

> [fol. 240] "Well, I think that the fact that the United States Government fights a war in Viet Nam, I don't think that I as a second class citizen of the United States have a requirement to support that war. I think my responsibility is to oppose things that I think are wrong if they are in Viet Nam or New York, or Chicago, or Atlanta, or wherever."

These facts were introduced before the House committee hearing the challenge. Mr. Bond was represented by counsel at the hearing and testified. He reaffirmed his adherence to all of these statements at the hearing and stated that they were still his views. There was no evidence then nor at the hearing before this court that Mr. Bond had

receded in any way from his views. However, by way of explanation, he did state to the House committee that he had never suggested or advocated that anyone burn his draft card. He stated his willingness and desire to take the prescribed oath to support the Constitution of the United States and the State of Georgia.

The petitions challenging Mr. Bond which were before the special committee of the House contain several grounds, including the contention that Mr. Bond's actions and statements gave aid and comfort to the enemies of the United States, and also violated the Selective Service laws, 50 App., USCA, § 462(a) and (b), and tended to bring discredit and disrespect on the House of Representatives.

The challenge was also on the basis that the statements and views of Mr. Bond disqualified him to take the oath to support the Constitution of the United States and the Constitution of Georgia as is required of a member of the House of Representatives. The theory was that Mr. Bond's statements were so repugnant to and inconsistent with his oath as to make it apparent that he could not honestly take the oath. This theory presents the central issue in the case.

[fol. 241] Pending Motions

Defendants moved to dismiss the complaint on the ground that the court lacks jurisdiction over the subject matter. Their view is that the determination of the qualifications of a member of the State House of Representatives is a matter which state law vests in the sole and exclusive jurisdiction of the House of Representatives and that the federal questions asserted are insubstantial. They urge that the absence of any substantial question concerning deprivation of federally protected rights indicates that the action of the House is not subject to federal judicial review.

The extent of review under the circumstances will be discussed hereinafter under the merits of the controversy. However, we do hold that the court has jurisdiction over the subject matter of the complaint. It could hardly be

argued that the House could refuse to seat a member because of his race or for any other reason amounting to an invidious discrimination under the equal protection clause of the Fourteenth Amendment. Cf. *Baker* v. *Carr*, 1962, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663. The denial of a seat to a Negro representative-elect would also violate the Fifteenth Amendment. Cf. *Gomillion* v. *Lightfoot*, 1960, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110. We think it follows that the court has jurisdiction over a denial of First Amendment rights by the state, and that the federal rights asserted here are not so insubstantial as to warrant our refusing jurisdiction. The motion of the state to dismiss will be overruled and an order may be presented accordingly.

The defendants also have motions pending to strike the plaintiffs King and Keyes on the ground that they do not [fol. 242] have such a direct interest in the litigation as would give them standing. They base their standing on an absence of representation in the House because Mr. Bond was deprived of his seat. The Governor has called an election for February 23, 1966 to fill the vacant seat.[1]

It is settled that one seeking to challenge the constitutionality of the statute must show that he has sustained or is in danger of sustaining some immediate direct injury. *Liverpool, N.Y. and P. Steamship Company* v. *Comm. of Emigration*, 1885, 113 U.S. 33, 5 S.Ct. 352, 28 L.Ed. 899; *Commonwealth of Massachusetts* v. *Mellon*, 1923, 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed. 1078. Dr. King and Mrs. Keyes have not " . . . alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues . . . " necessary in determining constitutional questions. *Baker* v. *Carr*, supra.

---

[1] Mr. Bond is a candidate for the vacant seat and is the only candidate. The qualifications closed on February 7, 1966. The General Assembly will adjourn its present session on Friday, February 18, 1966. There will be no other regular session of the General Assembly during the year 1966.

In a case involving the temporary lack of representation because an United States Senator had been denied his seat pending inquiry into his election and qualifications, *Barry v. United States*, 1929, 279 U.S. 597, 49 S.Ct. 452, 73 L.Ed. 867, the court said:

> "The temporary deprivation of equal representation which results from the refusal of the Senate to seat a member pending inquiry as to his election or qualifications is the necessary consequence of the exercise of a constitutional power, and no more deprives the State of its 'equal suffrage' in the constitutional sense than would a vote of the Senate vacating the seat of a sitting member or a vote of expulsion."

[fol. 243] We are of the opinion that plaintiffs King and Keyes do not have such a direct interest in the litigation as would give them standing to bring the complaint. This is particularly so in view of the fact that the complaint of Mr. Bond alone will resolve every conceivable issue. Moreover, Dr. King is not a registered voter in the House District in question. The motion of the state to dismiss as to these two plaintiffs will be granted and an order may be presented accordingly.

The Merits

The contention that Mr. Bond was denied his seat because of his race was resolved adversely to him from the bench during the hearing of this matter. To support this contention it was urged that Mr. Bond was a Negro; that SNCC was a militant civil rights organization; and that the question of race was inextricably related to each and every statement forming the basis of the challenge. This logic would create license in the name of race. Furthermore, seven Negroes, as stated, were seated on the same day as representatives. Two served on the special challenge committee at the request of Mr. Bond; two Negro senators appeared before the committee as character wit-

nesses for him; and two of the Negro representatives spoke on the floor of the House for him before the final vote. The charge of racial discrimination and thus of denial of equal protection of the law is without foundation in fact.

This ruling also disposes of any claim that Mr. Bond or the citizens and voters of House District No. 136 have been deprived of any right as Negroes under the equal protection clause of the Fourteenth Amendment or under the [fol. 244] Fifteenth Amendment. For the reasons stated on the standing question we reject also the contention that the action of the House denied them a republican form of government. This is not even a justiciable issue. *Baker* v. *Carr,* supra.

The substantial issue in the case rests on the guaranty of freedom of speech or to dissent under the First Amendment as that amendment has long been applicable to the states under the due process clause of the Fourteenth Amendment. *Gitlow* v. *New York,* 1925, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138; *De Jonge* v. *Oregon,* 1937, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278. But the inquiry does not end simply on the question of deprivation of First Amendment rights *per se.* Rather the inquiry must be in the context of two fundamental principles of government: separation of powers and state government under our system of federalism. The right of free speech would not long exist absent a government founded on these principles.

James Madison writing in Federalist No. 47 said with respect to the separation of powers doctrine:

> "The accumulation of all powers, legislative, executive, and judiciary in the same hands, whether of one, a few or many, and whether heredity, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

And from the beginning states have claimed and enjoyed the protection of the separation of powers principle as between their respective branches of government. This, to date, has been a part of our federalism.

Georgia adopted the separation of powers principle in its first Constitution. Art. I, Const. of 1777. McElreath, Constitution of Ga., § 239, p. 229. The Constitution of 1789, Art. I, § XIII, McElreath, supra, § 314, p. 243, provided that each House of the state legislature would be the judge of the elections, returns and qualifications of its own members and have the power to expel or punish for disorderly [fol. 245] behavior. Similar provisions have been included in every other Georgia Constitution. Ga. Const. of 1798, Art. I, § VIII, McElreath, § 364, p. 253; Const. of 1861, Art. II, § IV, Par. I, McElreath, § 484, p. 286, Const. of 1865, Art. II, § IV, Par. I, McElreath, § 585, p. 304; Const. of 1868, Art. III, § IV, Par. I, McElreath, § 709, p. 328; Const. of 1877, Art. III, § VII, Par. I, McElreath, § 882, p. 361.

> "Each House shall be the judge of the election, returns, and qualifications of its members and shall have power to punish them for disorderly behavior, or misconduct by censure, fine, imprisonment, or expulsion; but no member shall be expelled, except by a vote of two-thirds of the House to which he belongs."

This language is to be compared with Art. I, § 5, Clauses 1 and 2 of the Constitution of the United States:

> "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, . . ." (Clause 1)
>
> "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member." (Clause 2)

The Georgia courts have consistently refused to take jurisdiction over controversies having to do with the qualifications of legislators. The Senate or House, as happened to be the case, was deemed to have exclusive jurisdiction under the Georgia Constitution. *Rainey* v. *Taylor*, 1928,

[fol. 246] 166 Ga. 476, 143 S.E. 383; *Fowler* v. *Bostick*, 1959, 99 Ga. App. 428, 108 S.E.2d 720; and *Beatty* v. *Myrick*, 1963, 218 Ga. 629, 129 S.E.2d 764. This is the general law in this country. Indeed we believe that there is no case to the contrary, federal or state.

Plaintiff recognizes the separation of powers principle as such on both the federal and state levels. He argues however that it exists on the state level only insofar as it does not conflict with the Federal Constitution and must therefore give way to First Amendment rights in view of the vertical application of those rights to the states through the due process clause of the Fourteenth Amendment. This is a correct statement of the law subject to whatever rights were left by the Fourteenth Amendment to the state legislative branches for control of their internal affairs under our system of federalism. We thus must measure Mr. Bond's freedom to speak in this frame of reference.

Before attempting to resolve this new and substantial constitutional question we must concern ourselves with the threshold question, not asserted by plaintiffs, of whether the legislature had the power under the state Constitution or laws to bar Mr. Bond. Our distinguished and able Chief Judge is of the firm view that no such power existed. He seems to find the power of expulsion, but limits the power of judging qualifications to those expressed in the Georgia Constitution. We believe this to be a restrictive view, unfounded in recognized authority and not in keeping with our history or the principle of separation of powers.

Judge Story gave the reasons for vesting exclusive jurisdiction in the legislative branch in such cases (Story, Comm. on the Const., Vol. II, § 831, p. 294):

> [fol. 247] "It is obvious, that a power must be lodged somewhere to judge of the elections, returns, and qualifications of the members of each house composing the legislature; for otherwise there could be no certainty, as to who were legitimately chosen members, and any intruder, or usurper, might claim a seat, and thus trample upon the rights, and privileges, and liberties

> of the people. Indeed, elections would become, under such circumstances, a mere mockery; and legislation the exercise of sovereignty by any self-constituted body. The only possible question on such a subject is, as to the body, in which such a power shall be lodged. If lodged in any other, than the legislative body itself, its independence, its purity, and even its existence and action may be destroyed, or put into imminent danger. No other body, but itself, can have the same motives to preserve and perpetuate these attributes; no other body can be so perpetually watchful to guard its own rights and privileges from infringement, to purify and vindicate its own character, and to preserve the rights, and sustain the free choice of its constituents. Accordingly, the power has always been lodged in the legislative body by the uniform practice of England and America."

The Supreme Court in *Re Chapman,* 1897, 166 U.S. 661, 17 S.Ct. 677, 41 L.Ed. 1154, a case involving a senate investigation of the conduct of some of its members, said:

> "Under the Constitution the Senate of the United States has the power to try impeachments; to judge of the elections, returns, and qualifications of its own members; to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member; and it necessarily possesses the inherent power of self-protection."

We believe a state legislative body necessarily possesses this same inherent power of self-protection if the separation of powers doctrine is to have any real meaning on the state level. And self-protection goes to the process of qualifications as well as expulsion.

In *Hiss* v. *Bartett,* 1855, 3 Gray 468, 63 Am. Dec. 768, the question concerned the legislative power to expel a member. [fol. 248] The Massachusetts Constitution contained no such

power but did contain the power to judge returns, elections and qualifications. The court said:

> "The authority to be 'judge of the returns, elections, and qualifications of its own members,' does not limit their power; they are judges in other respects, in all respects."

Art. I, § 5, of the United States Constitution, as noted, provides that each House shall be the judge of the elections, returns and qualifications of its own members. Art. I, § 3 provides that no person shall be a representative unless he meets certain age, citizenship and residential requirements. In the Constitutional Convention there was an attempt to set up affirmative qualifications. During the debate on that draft which was later rejected, Mr. Dickinson of Delaware, opposed the formulation because it would be held to be exclusive. He stated that he was "against any recitals of qualifications in the Constitution. It was impossible to make a complete one, and a partial one would, by implication, tie up the hands of the Legislature from supplying omissions." Mr. Wilson of Pennsylvania took the same view, saying: "Besides a partial enumeration of cases will disable the Legislature from disqualifying odious and dangerous characters." (Proceedings in Congressional Record, 80th Congress, First Session, January 3, 1947, Vol. 93, p. 12, Senate debate on whether Senator Bilbo of Mississippi was disqualified.)

By way of a historical precedent, Mr. Bilbo was denied his seat in the United States Senate because, among other reasons, his views regarding the right of Negroes to vote were repugnant to the oath he would be required to take. The Senate did not believe that it was limited to the qualifications expressed in the Constitution.

[fol. 249] See Willoughby, The Constitutional Law of the United States, 2nd ed., Vol. I, p. 610, where after discussing in § 340 the subject of qualifications for membership being determined by Congress, the author states:

"The instances which have been cited make it sufficiently clear that the Senate and House have repeatedly held it to be proper that they should consider whether or not persons should be admitted as Senators or Representatives even though possessing all of the qualifications prescribed by the Constitution for membership and bringing credentials in due form of their election."

In the case of Senator Reed Smoot of Utah who had been seated but whose qualifications to continue as a Senator were questioned, the investigation committee recommended that he be expelled either for reason of his membership in a church that countenanced and encouraged polygamy and united church and state contrary to the spirit of the Constitution, or because he had taken an oath of such a nature and character that he is disqualified from taking the oath of office required of an United States Senator. The question was raised concerning the ability of the Senate to add qualifications other than those enumerated in the Constitution and was answered in the report as follows:

"If his conduct has been such as to be prejudicial to the welfare of society, of the nation, or its Government, he is regarded as being unfit to perform the important and confidential duties of a Senator, and may be deprived of a seat in the Senate, although he may have done no act of which a court could take cognizance." 1 Hind's Precedents, §§ 481-483.

This situation is analogous to the Georgia Constitution. There is nothing in it which limits qualifications of a legislator to those expressed therein. In point of fact there is at least one disqualification in the Georgia law which is not contained in the Constitution. Ga. Code, §§ 89-101, § 5, provides:

[fol. 250] "The following persons are held and deemed ineligible to hold any civil office, and the existence of any of the following states of facts shall be a sufficient rea-

son for vacating any office held by such person, but the acts of such person, while holding a commission, shall be valid as the acts of an officer de facto, viz:

* * * * * * *

"Persons of unsound mind, and those who, from advanced age or bodily infirmity, are unfit to discharge the duties of the office to which they are chosen or appointed."

The qualifications and disqualifications of legislators in the Georgia Constitution are not all inclusive. In sum, we find nothing that would compel the House to seat a member if a reasonable basis, within the context of due process of law as we shall next discuss, exists for the denial.

Having assumed jurisdiction, we come then to the main question of whether Mr. Bond was improperly denied his seat, but this question is prefaced by the test to be applied. With respect to the test, we hold that the free speech issue should be resolved in the context of giving effect to the separation of powers principle, and also our system of federalism to the extent that it permits self-government to the states under the supremacy of the Federal Constitution.

There is some authority for such an approach. On the federal level we have some guidance in the case of *Barry* v. *United States*, 1929, 279 U.S. 597, 49 S.Ct. 452, 73 L.Ed. 867. That case arose out of the refusal to seat Senator Vare because of alleged corruption in his election. The issue was over whether the District Court could grant relief to a witness who had been arrested by the Senate because he refused to testify at the subsequent inquiry. The Supreme [fol. 251] Court pointed out that the Senate was acting within its constitutional powers which were judicial in character and refused relief. It was said:

"Here the question under consideration concerns the exercise by the Senate of an indubitable power; and if judicial interference can be successfully invoked it can only be upon a clear showing of such arbitrary

and improvident use of the power as will constitute a denial of due process of law. That condition we are unable to find in the present case."

On the state level, with respect to state elections and thus giving effect to federalism but in no way involving the separation of powers principle, we begin with *Wilson* v. *North Carolina,* 1898, 169 U.S. 586, 18 S.Ct. 435, 42 L.Ed. 865. There the governor suspended a railroad commissioner and refused him a hearing. The Supreme Court refused relief. In *Snowden* v. *Hughes,* 1944, 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497, a candidate for the state senate alleged that the State Primary Canvassing Board denied him his rights under the equal protection clause by a willful, malicious and arbitrary refusal through a conspiracy to correctly certify the results of a primary election thereby eliminating him as a candidate. He brought his suit in the District Court under the Civil Rights Act of 1871. The Supreme Court refused relief on the ground that his case did not rise to the level of invidious, purposeful discrimination cognizable under the equal protection clause of the Fourteenth Amendment. The applicable rule of the case is to be found in the dissenting opinion of Mr. Justice Douglas, as follows:

"My disagreement with the majority of the Court is on a narrow ground. I agree that the equal protection clause of the Fourteenth Amendment should not be [fol. 252] distorted to make the federal courts the supervisor of the state elections. That would place the federal judiciary in a position 'to supervise and review the political administration of a state government by its own officials and through its own courts' (Wilson v. North Carolina, 169 US 586, 596, 42 L ed 865, 871, 18 S Ct 435)—matters on which each State has the final say. I also agree that a candidate for public office is not denied the equal protection of the law in the constitutional sense merely because he is the victim

of unlawful administration of a state election law. I believe, as the opinion of the Court indicates, that a denial of equal protection of the laws requires an invidious, purposeful discrimination. But I depart from the majority when it denies Snowden the opportunity of showing that he was in fact the victim of such discriminatory action. His complaint seems to me to be adequate to raise the issue. He charges a conspiracy to wilfully, maliciously and arbitrarily refuse to designate him as one of the nominees of the Republican party, that such action was an 'unequal' administration of the Illinois law and a denial to him of the equal protection of the laws, and that the conspiracy had that purpose...."

Snowden v. *Hughes*, as well as *Baker* v. *Carr*, supra, at least teach that there must be a showing of invidious, purposeful discrimination to give rise to relief under the equal protection clause. Here we have the due process clause and First Amendment rights. We think these cases show that some restraint is to be practiced by the courts in considering state political questions concerning particular offices as distinguished from whole systems such as are prevalent in malapportionment, or racial discrimination. If this premise be correct, then there is room for a balance between the separation of powers principle, a system of federalism and individual rights afforded under the federal Constitution.

Being of this view, we conclude that a reasonable test under circumstances such as are presented in this case would be to assume jurisdiction for the purpose of determining whether Mr. Bond was denied due process of law, [fol. 253] either procedural or substantive. Notice, an opportunity to be heard, to be represented by counsel, to testify and to offer evidence and to cross-examine adverse witnesses are envisioned in procedural due process. The transcript of the hearing which was held on the challenge to Mr. Bond demonstrates no absence of due process. It

is true that there was no subpoena power but no request for an absent witness was made. We reject the contention that procedural or substantive due process was violated by allowing the challengers to vote. A holding to the contrary would do violence to the power to judge qualifications.

As to substantive due process, we conclude that there must be a rational evidentiary basis for the ruling of the House to deny Mr. Bond his seat. The act must not have been arbitrary.

Does the action rest on any evidence which would support the denial? *Thompson* v. *Louisville*, 1960, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654; *Garner* v. *Louisiana*, 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed.2d 207.

Mr. Bond's right to speak and to dissent as a private citizen is subject to the limitation that he sought to assume membership in the House. As such he was required to take an oath to support the Constitution of the United States. This is a legitimate requirement. Indeed, the Federal Constitution requires it. Art. VI, § 3. One of the charges against him was that his statements were inconsistent with and repugnant to that oath. Was there any basis for this charge?

The SNCC statement is at war with the national policy of this country: To make certain that every citizen stands equal before the law; to make certain that every citizen has a fair chance to benefit in the freedom and opportu- [fol. 254] nities and bounties of this country; to export these same principles of democracy to the balance of the world wherever and whenever possible, even to the extent of lending military assistance where self-determination is denied in order that those denied may choose freedom if they so desire. A citizen would not violate his oath by objecting to or criticizing this policy or even by calling it deceptive and false as the statement did.

But the statement does not stop with this. It is a call to action based on race; a call alien to the concept of the pluralistic society which makes this nation. It aligns the organization with " . . . colored people in such other countries

as the Dominican Republic, the Congo, South Africa, Rhodesia . . . " It refers to its involvement in the black people's struggle for liberation and self-determination . . . ". It states that "Vietnamese are murdered because the United States is pursuing an aggressive policy in violation of international law." It alleges that Negroes, referring to American servicemen, are called on to stifle the liberation of Viet Nam.

The call to action, and this is what we find to be a rational basis for the decision which denied Mr. Bond his seat, is that language which states that SNCC supports those men in this country who are unwilling to respond to a military draft. The fact that the last paragraph calls on them to devote their energies to the alternative of working in the civil rights movement in no way avoids the fact that the organization offers support to men who are unwilling to respond to a military draft. Cf. *Gara* v. *United States*, 6 Cir., 1949, 178 F.2d 38.

[fol. 255] Mr. Bond was careful to affirm this statement. He went further, and he was more than a private citizen; he was an officer and employee of SNCC and was about to become a member of the House of Representatives of Georgia. He stated that he admired the courage of anyone who burned his draft card. He stated that as a pacifist he was eager and anxious to encourage people not to participate in the war in Viet Nam or in any other war for any reason that they choose, and lastly, he stated that, as a second class citizen, he did not think that he had the requirement to support the war in Viet Nam.

The Congress has the obligation under the Federal Constitution for providing for the common defense of this nation. The Selective Service System is a part of that defense. We are committed in Viet Nam. The Congress approved this course in Public Law 88-408, August 10, 1964, wherein the president was empowered to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression from the campaign being waged by the ". . . Communist

regime in North Vietnam." This resolution states that the United States " . . . regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia."

Whether Mr. Bond should have been seated was a question which presented itself to the House of Representatives of Georgia under our system. Whether the wisest course was followed is not for us to say. The judgment of the court is not to be substituted for that of the House. Our function is to determine whether he has been denied some fundamental federal right to which he was otherwise entitled. We find and hold that his statements and affirmation of the SNCC statement as they bore on the functioning [fol. 256] of the Selective Service System could reasonably be said to be inconsistent with and repugnant to the oath which he was required to take. This suffices as a rational basis for the action of the House. The fact that the statement was otherwise freighted with racial overtones and was at variance with the established national concept of a country accommodating all nationalities and ethnic groups is a part of the basis of our holding only insofar as it relates to the call not to support the Selective Service System.

The charge that the constitutional provision of Georgia authorizing the House to judge the qualifications of its members and the House rule embodying it are unconstitutionally vague is without merit. It follows from what we have said that neither was unconstitutionally applied to Mr. Bond. It also follows from what we have said that the resolution denying Mr. Bond his seat was not an *ex post facto* law or a bill of attainder. To so hold in the face of a finding that there was a rational basis for the action of the House would be to destroy the constitutional power of judging qualifications.

All relief is denied and the complaint will be dismissed. Defendants may present a judgment accordingly.

This 10 day of February, 1966.

Griffin B. Bell, United States Circuit Judge.

Lewis R. Morgan, United States District Judge.

[fol. 257]

JUDGE ELBERT P. TUTTLE dissenting.

Tuttle, Circuit Judge:

With deference I must dissent. I am convinced that Representative-elect Bond was illegally deprived of his seat in the House of Representatives of Georgia and that this court should so hold.

Julian Bond, the plaintiff in this action, was duly elected by the voters of his General Assembly District No. 136 as their representative in the House of Representatives of the Georgia General Assembly for the session commencing January 1, 1966. This is a one-year session, made necessary by this Court's previous decision requiring a reapportionment of the Georgia State Legislature.

Upon his presenting himself along with the other newly elected members of the House of Representatives, he was asked to step aside because challenges to his qualifications had been filed by some 75 members of the House. After the other members had been duly sworn in, a resolution protesting the seating of Representative-elect Bond was referred by the Speaker of the House to a special committee designated to hear the contest. The committee, after a hearing, recommended that he be not seated. This recommendation was accepted by the House, and he was denied his seat.

Since the first attack that is made is based upon the contention that the House exceeded its authority in voting to reject Bond, we turn first to a consideration of the provisions of the Georgia Constitution dealing with the qualifications and eligibility of members.

Article III, Section VII, Paragraph I, of the Georgia Constitution (§2-1901, Ga. Code Ann.) provides as follows:

[fol. 258] "Election, returns, etc.; disorderly conduct.—East House shall be the judge of the election, returns, and qualifications of its members and shall have power to punish them for disorderly behavior, or misconduct, by censure, fine, imprisonment, or ex-

pulsion, but no member shall be expelled, except by a vote of two-thirds of the House to which he belongs."

Article III, Section VI, Paragraph I, of the Constitution of the State of Georgia (§2-1801, Ga. Code Ann.) provides as follows:

"Qualifications of representatives.—The Representatives shall be citizens of the United States who have attained the age of twenty-one years, and who shall have been citizens of this State for two years, and for one year residents of the counties from which elected."

Article II, Section II, Paragraph I, of the Constitution of the State of Georgia (§2-801, Ga. Code Ann.) provides as follows:

"Registration of electors; who disfranchised.—The General Assembly may provide, from time to time, for the registration of all electors, but the following classes of persons shall not be permitted to register, vote, or hold any office, or appointment of honor, or trust in this State, to-wit: 1st. Those who shall have been convicted in any court of competent jurisdiction of treason against the State, of embezzlement of public funds, malfeasance in office, bribery or larceny, or of any crime involving moral turpitude, punishable by the laws of this State with imprisonment in the penitentiary, unless such persons shall have been pardoned. 2nd. Idiots and insane persons."

Article III, Section IV, Paragraph VI, of the Georgia Constitution (§2-1606, Ga. Code Ann.) provides as follows:

"Eligibility; appointments forbidden.—No person holding a military commission, or other appointment, or office, having any emolument, or compensation annexed thereto, under this State, or the United States, or either of them except Justices of the Peace and officers of the militia, nor any defaulter for public

money, or for any legal taxes required of him shall have a seat in either house; nor shall any Senator, or Representative, after his qualification as such, be elected by the General Assembly, or appointed by the Governor, either with or without the advice and consent of the Senate, to any office or appointment having any emolument annexed thereto, during the time for which he shall have been elected, unless he shall first resign his seat, provided, however, that during the term for which he was elected no Senator or Representative shall be appointed to any civil office which has been created during such term."

[fol. 259] Article VII, Section III, Paragraph VI, of the Constitution of the State of Georgia (§2-5606, Ga. Code Ann.) provides as follows:

"Profit on public money.—The receiving, directly or indirectly, by any officer of State or county, or member or officer of the General Assembly of any interest, profits or perquisites, arising from the use or loan of public funds in his hands or moneys to be raised through his agency for State or county purposes, shall be deemed a felony, and punishable as may be prescribed by law, a part of which punishment shall be a disqualification from holding office."

Article III, Section IV, Paragraph V, of the Georgia Constitution (§2-1605, Ga. Code Ann.) provides as follows:

"Oath of members.—Each senator and Representative, before taking his seat, shall take the following oath, or affirmation, to-wit: 'I will support the Constitution of this State and of the United States, and on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this State."

The foregoing provisions of the Georgia Constitution are the only stated qualifications or rules of eligibility contained in the State Constitution touching on the membership in either the Senate or the House of Representatives of the Georgia General Assembly.

Julian Bond was denied the right to take his oath as an elected member of the Georgia House of Representatives by a resolution adopted by the said House on January 10, 1966, which said resolution was in the following language:

"Relative to the matter of the seating of Representative-Elect Julian Bond; and for other purposes.

"WHEREAS, a special committee created pursuant to H.R.No. 7 which was appointed for the purpose of holding a hearing on petitions challenging and contesting the seating of Representative-Elect Julian Bond of the 136th District has conducted a hearing in said matter; and

"WHEREAS, said committee has submitted a report in which it is recommended that Representative-Elect Julian Bond not be allowed to take the oath of office [fol. 260] as a Representative of the House of Representatives and that he not be seated as a member of the House of Representatives.

"NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that the report of the aforesaid committee is hereby adopted and the recommendations contained therein shall be followed.

"BE IT FURTHER RESOLVED that Representative-Elect Julian Bond shall not be allowed to take the oath of office as a member of the House of Representatives and that Representative-Elect Julian Bond shall not be seated as a member of the House of Representatives.

"BE IT FURTHER RESOLVED that the Clerk of the House is hereby instructed to immediately transmit a

copy of the aforesaid report and a copy of this resolution to the Governor, to the Secretary of State and to Representative-Elect Julian Bond."

The said resolution expressly "adopted" the report of the special committee which was appointed for the purpose of conducting, and did actually conduct, a hearing on the matter of the challenge to the seating of Representative-Elect Bond. The report of the committee follows:

"The Special Committee appointed pursuant to H.R. #7 conducted a hearing on January 10, 1966, beginning at 2:30 o'clock p.m., in the chamber of the House of Representatives, State Capitol, on the matter of petitions filed challenging and contesting the seating of Representative-Elect Julian Bond of the 136th District.

"Based upon testimony and the evidence and documents before this Committee, the Committee recommends that Representative-Elect Julian Bond not be allowed to take the oath of office as a member of the House of Representatives and that he not be seated as a member of the House of Representatives.

"This 10th day of January 1966."

The contest which was thus submitted to the special committee, and thereafter decided by the House, resulted from charges and specifications filed by certain members of the House of Representatives in two separate petitions which, in essential part, are as follows:

PETITION I

"COUNT I

"The Student Nonviolent Coordinating Committee, [fol. 261] an organization and association of which Representative-Elect Julian Bond is a member, agent, and publicity director, has caused to be made certain statements concerning the position of the United

States in the Viet Nam conflict, a copy thereof being attached hereto, marked Exhibit A and by reference made a part hereof, and the said Representative-Elect Julian Bond did publicly endorse, approve and confirm said statement.

"COUNT II

"Said representative-elect has said that he admires the courage of those persons who burn their draft cards.

1.

"The actions and statements of said representative-elect show that he does not and will not support the Constitution of the United States and of the State of Georgia, as required by law (Constitution of Georgia, Article III, Section IV, Paragraph V (Code §2-1605)); Constitution of the United States, Article VI, Section 3.

2.

"By said actions and statements, said representative-elect adheres to the enemies of the United States and of the State of Georgia, contrary to the Constitution of Georgia (Article I, Section II, Paragraph II) and of the United States (Article III, Section 3, Cl. 1).

3.

"By said actions and statements, said representative-elect gives aid and comfort to the enemies of the United States and of the State of Georgia, contrary to the Constitution of Georgia (Article I, Section II, Paragraph II) and of the United States (Article III, Section 3, Cl. 1).

4.

"Said actions and statements constitute a violation of the United States Code, Title 50, §462(a).

5.

"Said actions and statements constitute a violation of the United States Code, Title 50, §462(b), as amended.

6.

"The statements referred to above are reprehensible and are such as tend to bring discredit to and disrespect of the House of Representatives and constitute actions on the part of Representative-Elect Julian Bond sufficient to prevent him from being seated as a member of the House of Representatives.

7.

"Such actions and statements show that he is unqualified and ineligible to be a member of the House of Representatives."

EXHIBIT A TO PETITION I

"The Student Nonviolent Coordinating Committee has a right and a responsibility to dissent with United States foreign policy on an issue when it sees fit. The Student Nonviolent Coordinating Committee now states its opposition to United States' involvement in Viet Nam on these grounds:

"We believe the United States government has been deceptive in its claims of concern for freedom of the Vietnamese people, just as the government has been [fol. 262] deceptive in claiming concern for the freedom of colored people in such other countries as the Dominican Republic, the Congo, South Africa, Rhodesia and in the United States itself.

"We, the Student Nonviolent Coordinating Committee, have been involved in the black people's struggle for liberation and self-determination in this country for the past five years. Our work, particularly in the

South, has taught us that the United States government has never guaranteed the freedom of oppressed citizens, and is not yet truly determined to end the rule of terror and oppression within its own borders.

"We ourselves have often been victims of violence and confinement executed by United States government officials. We recall the numerous persons who have been murdered in the South because of their efforts to secure their civil and human rights, and whose murderers have been allowed to escape penalty for their crimes.

"The murder of Samuel Young in Tuskegee, Ala., is no different than the murder of peasants in Viet Nam, for both Young and the Vietnamese sought, and are seeking, to secure the rights guaranteed them by law. In each case the United States government bears a great part of the responsibility for these deaths.

"Samuel Young was murdered because United States law is not being enforced. Vietnamese are murdered because the United States is pursuing an aggressive policy in violation of international law. The United States is no respecter of persons or law when such persons or laws run counter to its needs and desires.

"We recall the indifference, suspicion and outright hostility with which our reports of violence have been met in the past by government officials.

"We know that for the most part, elections in this country, in the North as well as the South, are not free. We have seen that the 1965 Voting Rights Act and the 1964 Civil Rights Act have not yet been implemented with full federal power and sincerity.

"We question, then, the ability and even the desire of the United States government to guarantee free elections abroad. We maintain that our country's cry of 'preserve freedom in the world' is a hypocritical mask behind which it squashes liberation movements which are not bound, and refuse to be bound, by the expediencies of United States cold war policies.

"We are in sympathy with, and support, the men in this country who are unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Viet Nam in the name of the 'freedom' we find so false in this country.

"We recoil with horror at the inconsistency of a supposedly 'free' society where responsibility to free-[fol. 263] dom is equated with the responsibility to lend oneself to military aggression. We take note of the fact that 16 percent of the draftees from this country are Negroes called on to stifle the liberation of Viet Nam, to preserve a "democracy" which does not exist for them at home.

"We ask, where is the draft for the freedom fight in the United States?

"We therefore encourage those Americans who prefer to use their energy in building democratic forms within this country. We believe that work in the civil rights movement and with other human relations organizations is a valid alternative to the draft. We urge all Americans to seek this alternative, knowing full well that it may cost them lives—as painfully as in Viet Nam."

PETITION II

"(1) That the Constitution of Georgia, Article III, Section VII, Paragraph 1 provides that each House shall be the judge of the election, returns, and qualifications of its members.

"(2) That the Constitution of Georgia, Article III, Section IV, Paragraph 5, specifically requires each senator and representative, before taking their seat, to take the following oath or affirmation, to-wit:

'I will support the Constitution of this State and of the United States, and on all questions and measures which may come before me, I will so conduct

myself, as will, in my judgment, be most conducive to the interest and prosperity of this State.'

"That the said Julian Bond has specifically and publicly endorsed in full a policy statement of an organization known as the Student Non-Violent Coordinating Committee, which statement reads as follows:

'We are in sympathy with, and support, the men in this country who are unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Viet Nam in the name of the 'freedom' we find so false in this country.'

'We recoil with horror at the inconsistency of a supposedly free society where responsibility to freedom is equated with the responsibility to lend oneself to military aggression. We take note of the fact that 16 per cent of the draftees from this country are Negroes called on to stifle the liberation of Viet Nam, to preserve a 'democracy' which does not exist for them at home . . .'

[fol. 264] "We, therefore, encourage those Americans who prefer to use their energy in building democratic forms within this country. We believe that work in the civil rights movement and with other human relations organizations is a valid alternative to the draft. We urge all Americans to seek this alternative, knowing full well that it may cost them their lives—as painfully as in Viet Nam.'

"(4) That the said Julian Bond is not qualified under the Constitution of Georgia to take the oath as a Member of the House of Representatives representing the 136th Representative District of Fulton County, Georgia, inasmuch as his full endorsement of the aforesaid policy statement of the Student Non-Violent Coordinating Committee is totally and completely repugnant to

and inconsistent with the mandatory oath prescribed by the Constitution of Georgia for a Member of the House of Representatives to take before taking his seat.

"(5) That the said Julian Bond cannot justly and honestly take the aforementioned mandatory constitutional oath which requires him to uphold the Constitution of the United States and the Constitution of Georgia, having endorsed the aforesaid subversive policy statement."

At the Committee hearing, the proponents of the contest sought to substantiate their claim by having played into the record a taped newscaster's interview with Mr. Bond which, although not made by him as a public statement upon his own initiative in the normal manner of making a hortatory expression, was made, it may be assumed, with the knowledge that it would be broadcast by the newscaster. The Committee also invited from Mr. Bond his comment. He stated to the Committee that he "did support" the statement of the SNCC, quoted above, in its entirety.

In support of the charge that Bond had "said that he admires the courage of those persons who burn their draft cards", the following question was asked: "Do you admire the courage of persons who burn their draft cards?" after which, the following question and answers occurred:

[fol. 265] "A. I admire people who take an action, and I admire people who feel strongly enough about their convictions to take an action like that knowing the consequences that they will face, and that was my original statement when asked that question.

"Q. Do you still adhere to that statement? A. Yes, I do.

"Q. Let me see if I have your statement correct, that you admire people who are willing to take the consequences, to stand up for their principles, is that substantially what you said? A. That is correct.

"Q. And does that admiration of such people go to taking such a stand, when such a stand is in violation of a valid law of the United States? A. I have never suggested or counseled or advocated that anyone other person burn their draft card. In fact, I have mine in my pocket and will produce it if you wish. I do not advocate that people should break laws. What I simply try to say was that I admired the courage of someone who could act on his convictions knowing that he faces pretty stiff consequences.

"Q. So that you admire the courage of the persons in the given instance who burn their draft cards, or who were willing to take the consequences for burning their draft cards? A. That is right."

In a written response to the charges and during the proceedings Representative Bond stated his willingness and desire to take the oath to support the Constitutions of the United States and the State of Georgia as prescribed by the Georgia Constitution.

It is clear that the refusal to seat this elected representative was upon the charge, adequately proven, of his stated support in an interview with a newsman and subsequently in the corridor of the House of Representatives (after the challenge had been referred to the Committee) of the [fol. 266] SNCC statement and his views touching on the draft card matter.

The suit before us challenges the authority of the House of Representatives, under the provision making it "the Judge of the . . . qualifications of its members" to deny an elected member, the right to be seated for any lack of qualifications not specifically prescribed in the Georgia Constitution. Further, the complaint asserts that the actual ground of his rejection as a member was the disapproval by the House of his conduct, to-wit: the expression of the extremely unpopular (characterized as illegal and disloyal by the proponents of the contest) views as above set out; that a denial of his seat because of such conduct constitutes

an abridgment by the State of Georgia of Bond's freedom of speech in violation of the guarantee of the First Amendment to the United States Constitution, which guarantee is made effective as against State action by "absorption" into the guarantee of due process by the Fourteenth Amendment. See Palko v. Connecticut, 302 U.S. 319, 324, 326.

The complaint requires the convening of a three-judge District court under Title 28, Section 2281, United States Code Annotated, because it charges that if Article III, Section VII, Paragraph 1 of the Georgia Constitution, supra (making each House the judge of the qualifications of its members), is construed in the manner in which it was applied in this case, then the said Section of the Georgia Constitution is invalid under the Fourteenth Amendment. Once convened properly, such a court has jurisdiction to decide every question involved in the litigation, state as well as federal. Missouri v. Brashear Freight Lines, 312 U.S. 621; R.R. Comm. of Calif. v. Pacific Gas & Electric Company, 302 U.S. 388.

[fol. 267] It is a basic principle of jurisprudence that if, by construction of a statute in a manner that will make it constitutional, this avoids the question whether the statute, differently construed, would be unconstitutional, a court should first construe the statute with an eye to the avoiding of the constitutional question if possible. See Rescue Army, et al. v. Municipal Court of Los Angeles, 331 U.S. 549, 568, et seq.

Thus, we look first to determine whether the challenged provision of the Georgia Constitution may properly be construed so as to permit the unseating of Representative-Elect Bond on the grounds stated. Of course, if the Georgia Supreme Court had construed the statute in such a manner this construction of the Georgia Constitution would be binding on us. The Court has not so construed it.

The State of Georgia claims that, at least within the factual context of this contest, the power of the House of Representatives to judge Bond's qualifications is "ple-

nary." It offers, in support of this proposition, three Georgia Court decisions: Rainey v. Taylor, 166 Ga. 476 (1928); Beatty v. Myrick, 218 Ga. 629 (1963); and Fowler v. Bostick, 99 Ga. App. 428 (1959).

In point of fact, in none of these Georgia decisions did the court determine that the House or Senate had absolute and final jurisdiction to judge whether the contesting parties lacked qualifications *which are not expressly stated as "qualifications" or rules of "eligibility" in the Georgia Constitution.*

[fol. 268] The Rainey case dealt with a charge by one Taylor, in a *quo warranto* proceeding against Rainey, that Rainey was, at the time of his election to the Georgia General Assembly, an acting superintendent of Schools. It being provided in the Georgia Constitution that the "qualifications of members" is to be decided by the House of Representatives, and, the Constitution in what is now Section 2-1606, quoted supra, providing that the holder of another state office "shall not have a seat in either House," it was a question for the General Assembly to judge whether Rainey was disqualified under a *stated* ground in the constitution. The Court merely held that a rule of "eligibility" was comprehended within the term "qualifications."

In the subsequent case of Beatty v. Myrick, in a headnote opinion, the Supreme Court of Georgia stated that the question was which of two named candidates was legally *elected* to represent the Third Senatorial District in the State Senate. There was thus no question of testing the "qualifications" of the senator-elect. It was simply a matter of judging who was the winner of the election. This question is expressly confided by the Constitution to the State Senate.

Fowler v. Bostick was in all respects similar to the Rainey case. It was an action for a declaratory judgment seeking to disqualify Bostick as ineligible to be seated as Representative of Tift County because he was, at the time, alleged to hold the office of Clerk of the Superior Court of Tift County. Here, as in Rainey, the court was asked to

determine whether an elected member met the *qualifications expressly stated* in the Georgia Constitution. Of [fol. 269] course, no criticism can be made of such a decision as these three by the Georgia courts. The question, not before the Court there, is whether, under the Georgia Constitution, the Legislature can find a lack of qualifications beyond those *expressly provided* for in the Constitution itself and as set out above.

In the absence of a strong showing of judicial interpretation to the contrary, it would seem that simple justice would require a holding that where specific qualifications are stated for an office and the Legislature is given the power to judge whether an aspirant for the office is "qualified," the legislature, as judge, should be required to look to the stated qualifications as the measuring stick. To hold to the contrary and permit the House as judge to go at large in a determination of whether Representative-Elect "A" meets undefined, unknown and even constitutionally questionable standards shocks not only the judicial, but also the lay sense of justice.

It can be readily understood why there are few legal precedents to give guidance in such a situation. In the first place, it can be assumed that members of a state or national legislature are prone to recognize the right of the electorate to choose as their representative whom they want to serve them. Thus, there may not be expected to be many clear precedents. Further it is readily apparent that in those cases in which a legislative body has exceeded its authority the shortness of the term of office may make moot any contest in court.

Nevertheless, there are some legislative precedents. In a New York state general election held on November 4, 1919, five members of the Socialist party were elected as members of the General Assembly of the State of New [fol. 270] York. They appeared and took the oath of office, and thereupon, as soon as the House was organized, a motion was made to deprive them of their rights to participate, or, in other words, to expel them from membership

in the House. A resolution for such expulsion was submitted and referred to a committee which conducted hearings resulting in a resolution to expel, and the members were later, by action of the Legislature, expelled from membership.

During the pendency of the hearings, the annual meeting of the Association of the Bar of the City of New York adopted a resolution authorizing appointment of a committee "to appear before the Assembly or its Judiciary Committee and take such action as may in their judgment be necessary to safeguard and protect the principles of representative government guaranteed by the Constitution, which are involved in the proceedings now pending."

This Committee, under the Chairmanship of Honorable Charles E. Hughes, a former Governor of the state of New York and a former member of the United States Supreme Court who resigned to be a candidate for the presidency of the United States in the elections in 1916, and who later was reappointed to the Supreme Court of the United States and became Chief Justice, and including in its membership Honorable Joseph M. Proskauer, later an eminent New York Supreme Court Justice, and Honorable Ogden L. Mills, who later became Secretary of the Treasury of the United States, (the other members, Honorable Morgan J. O'Brien and Honorable Louis Marshall, all doubtless men of similar public spirit and competence, but their names do not at the moment call to mind the character of their other public service) filed a careful brief, because, as the Committee said, they regarded "these proceedings as inimical to our institutions, because they tend to subvert [fol. 271] the very foundation upon which they rest—representative government." In the course of the discussion of the situation then pending, the Committee made it plain that the action was an action for expulsion rather than an action to determine the qualifications of the members under the provisions of the New York Constitution similar to that of the State of Georgia. In pointing to the reason why they considered the proceedings not a testing of "the

qualifications" of the members, they cited from the proceedings of the United States Senate, in which Senator Reed Smoot, of Utah, was the subject of proceedings attacking his membership in the United States Senate on the charge that he was one of the twelve apostles of the Mormon Church, and, therefore, a prominent member of the hierarchy, and, though not a polygamist, sanctioned polygamy, a practice prohibited by the organic act of Congress admitting Utah as a state.

In the course of the Smoot proceedings, Senator Philander C. Knox, a distinguished Senator from the state of Pennsylvania, discussed the question of testing the qualifications of a member of the Senate under the United States Constitutional provisions that are similar to those in Article III, Section V, etc., set out above. His statement is a complete answer to the claim that a legislature may require any qualifications it chooses. Senator Knox said:

> "I have intentionally referred to the proposed action against Senator Smoot as expulsion. I do not think the Senate will seriously consider that any question is involved except one of expulsion, requiring a two-thirds vote.[1] There is no question as to Senator Smoot possessing the qualifications *prescribed by the Constitution* and therefore we cannot deprive him of his seat by a majority vote. *He was, at the time of his election, over 30 years of age and had been nine years* [Vol. 272] *a citizen of the United States, and when elected was an inhabitant of Utah. These are the only qualifications named in the Constitution, and it is not in our power to say to the States, 'these are not enough; we require other qualifications,' or to say that we cannot trust the judgment of the states in the selection of Senators, and we, therefore, insist upon the right to disapprove them for any reason. This claim*

[1] Under the United States Constitution, a majority of the Senate could find a Senator not qualified, whereas it required a two-thirds vote to expel a member. This is similar to the Georgia Constitution.

of right to disapprove is not even subject to any rule of the Senate specifying additional qualifications of which the states have notice at the time of selecting their senators, but it is said to be absolute in each case as it arises, uncontrolled by any canon or theory whatever . . . Subject to these limitations imposed by the Constitution, the states are left untrammeled in their right to choose their senators." (Italics supplied.)

The record discloses that the Senate declined to expel or otherwise deny Senator Smoot his right to sit. However, the five members of the New York State Legislature, whose cause was so eloquently presented by the Hughes Committee, did not fare so well. They were denied their seats.

Expressing their own views again on the question of the power of the Legislature to disqualify a member for grounds other than those stated in the Constitution, the Hughes Committee stated:

"We contend that the opinion expressed by Senator Knox in the case of Senator Smoot, supra, correctly defines what is meant by qualification. The constitution expressly specifies a number of disqualifications [as is also true in the Georgia Constitution] . . . The principle of constitutional interpretation applicable to this phase of the subject was elaborated in classic phrase by Chancellor Sanford in Barker v. People, 3 Cowen, 703, which, although decided in 1824, and therefore involving the interpretation of an earlier Constitution, is nevertheless as applicable in principle to the present Constitution: 'Eligibility to public trust, is claimed as a constitutional right, which cannot be abridged or impaired. The Constitution established and defines the right of suffrage; and gives to the electors and to their various authorities, the power to confer public trust . . . *Excepting particular exclusions thus established, the electors and the appointing*

authorities are, by the Constitution, wholly free to confer public stations upon any person, according to their pleasure. The Constitution giving the right of election and the right of appointment; these rights consisting [fol. 273] essentially in the freedom of choice; and the Constitution also declaring, that certain persons are not eligible to office; it follows from these powers and provisions, that all other persons are eligible. Eligibility to office is not declared as a right or principle, by any expressed terms of the Constitution; but it results, as a just deduction, from the expressed powers and provisions of the system. The basis of the principle, is the *absolute liberty of* electors and the appointing authorities, *to choose* and to appoint *any person, who is not made ineligible by the Constitution* . . . I, therefore, conceive it to be entirely clear that the Legislature cannot establish arbitrary exclusions from office or any general regulation requiring qualifications, which the Constitution has not required.' . . . He would be indeed a bold individual who would assert that any American Legislative body can set up an arbitrary standard of qualification of its members that finds no sanction in the general will of the people and that is contrary to the spirit of the Constitution . . ." Brief of Special Committee appointed by the Association of the Bar of the City of New York, January 20, 1920. (Italics supplied.)

A number of actions of the United States House of Representatives or the United States Senate are cited by the State as illustrative in its argument that the term "qualification," is broad enough to encompass a test of the representative elect's general character and loyalty. Based upon the excerpts from these cases as contained in the State's brief, each of them is to be distinguished.

The first of these cases is that of Victor Berger, a Congressman from Wisconsin, who had served in the House from 1911 to 1913. In 1918, he was again elected to the

66th Congress. Before appearing to be sworn in, he was indicted by the grand jury in the United States District Court for the violation of the Espionage Act. He was found guilty and sentenced to 20 years imprisonment. The appeal was pending at the time he offered to take the oath of office in the United States Congress. The House of Representatives adopted the report of the Committee, which found that "the question was 'whether or not Victor L. Berger was guilty of a violation of the Espionage Act, [fol. 274] whether or not he did give aid or comfort to the enemies of the United States during the war with Germany [which, of course, in time of war, would amount to treason under the Constitution of the United States] and whether or not he was ineligible to a seat in the House of Representatives." The Committee found "after a careful consideration of all the evidence, in the opinion of your committee, the admitted acts, writings, and declarations of Victor L. Berger . . . giving such acts in the language of the writings and declarations their ordinary, everyday meaning, and without considering any other evidence, clearly establishes a conscious, deliberate and continuing purpose and intent to obstruct, hinder and embarrass the government of the United States and the prosecution of the war, and thus to give aid and comfort to the enemies of our country. . . ."

The United States Constitution, in describing the crime of treason provides that "the Congress shall have power to declare the punishment of treason," Article III, Chapter 3, Section 3[2]. Congress has determined that one of the punishments for treason is that "Every person so convicted of treason shall, moreover, be incapable of holding any office under the United States." This was the language of the statute that was in effect at the time of Berger's contest. The present counterpart is found in 18 U.S.C.A., §2381, in which it says that a person so convicted "shall be incapable of holding any office under the United States."

Thus, although he had been convicted of sedition and not treason, Berger's rejection by the House of Representatives was on a determination by the House that he had

committed treason, which, if found by a court would be a lack of qualifications prescribed by the United States Constitution. Although in the committee report, it was argued that the House was not limited to constitutionally defined "qualifications" in passing upon Berger's eligibility, never-
[fol. 275] theless the action of the House in rejecting him falls within the pattern of what is permissible under the principles discussed in the Hughes Committee Report, supra. There was no court test of this exclusion.

William Blount, of Tennessee, was *expelled* from the Senate after having been seated. He was expelled "for conduct inconsistent with his public duty, rendering him unworthy of further continuance of his present public trust." This action was taken under the provision of the United States Constitution which authorizes "each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with concurrence of two-thirds, expel a member." Article I, Sec. 5, Clause 2. It has nothing to do with Article I, Section 5, Clause 1, which provides that "each House shall be the judge of the elections, returns and qualifications of its own members. . . ." This is an important distinction because the authority to expel, unlike the provision relating to qualifications, is not limited by any language in the Constitution prescribing the grounds for expulsion.

John Smith, of Ohio, was cited for treason and misdemeanor as an accomplice of Aaron Burr. The Senate voted 19 for expulsion and 10 against. On the resolution failing to secure the necessary two-thirds, Smith retained his seat. Here, again, it was an action of expulsion. It is no precedent for giving "plenary" power to judge qualification.

John M. Niles, of Connecticut, was examined before taking the oath of office as to his mental capacities. The Committee found that he suffered under a mental physical debility, but that he was able to perform his duties, and he was seated. Of course, as noted above, insanity is a qualification by the Georgia Constitution for members of the House and Senate of this State.

[fol. 276] John D. Bright, of Indiana, was expelled because it was found that he had written a certain letter to assist a member of the Confederate states to buy firearms. Note again that this was a matter of expulsion for an act of misconduct while a member and not a matter of determining qualification to be seated.

Joshua Hill and H.V.M. Miller, of Georgia, were refused seats in the United States Senate because of the manner in which the Georgia General Assembly, which had elected Hill and Miller, was conducting its elections. (Of course, *17th E.B.* this was at a time prior to the adoption of the ~~16th~~ Amendment, and senators were elected by the State Legislatures.) This, of course, went directly to the question of judging "the election," which is expressly authorized by the United States and Georgia Constitutions. The Reed Smoot case has been discussed previously. It was again, a question of expelling a senator and not one of passing on his qualifications at the time he presented himself.

The most recent case involved Senator Theodore G. Bilbo, who was not administered the oath pending an investigation of charges that his actions dealing with racial policies were said to be "contrary to the public policy, harmful to the dignity and honor of the Senate, dangerous to the perpetuity of free government, and taint [sic] with fraud and corruption of the credentials."

If a substantial part of the charge was the question of fraud and corruption of the credentials, this, of course, would be a matter of judging "the election," which is specifically authorized. In any event, Senator Bilbo was forced to step aside for an operation and he died before action was taken on his seating.

[fol. 277] In 1926, William S. Vare, of Pennsylvania, and Frank L. Smith, of Illinois, were refused seats for excessive expenditures during their respective election campaigns. Once again this was a question of judging "the election," authority for which is expressly given to the Senate.

If there are other cases involving action by the United States Congress in which it is expressly shown that it has assumed the right to expand the list of qualifications beyond those stated in the United States Constitution, they have not been brought to our attention.

It is quite difficult to ascertain from available materials, which, if any, state cases cited in the briefs of the parties were decided on a basis that explicitly shows that a state House or a state Senate has considered that it can determine a prospective member to be not qualified for grounds other than those stated in the respective constitutions as the qualifications or basis of eligibility for the office.

Representative-Elect Bond was not challenged on the ground that he was not 21 years of age; that he had not been a citizen of the State for the requisite two years and a resident of the county from which he was elected. Nor was he challenged on the ground that he had been convicted of treason against the state, embezzlement of public funds, misfeasance in office, bribery or larceny or any crime punishable by the laws of the state, punishable with imprisonment in the penitentiary. He was not charged with having received any interest, profit or perquisite arising from the use or loan of public funds. He offered to take the prescribed oath of office.

Since it cannot be claimed that he was found disqualified [fol. 278] on some ground other than those of which he was charged, as this would be the clearest sort of deprivation of due process guaranteed not only by the United States Constitution, but also by the Georgia Constitution as well, Article I, Section I, Paragraph III, Constitution of the State of Georgia, Section 2-103, Ga. Code Ann., it is clear that Bond was found disqualified on account of conduct not enumerated in the Georgia Constitution as a basis of disqualification. This was beyond the power of the House of Representatives. It runs counter to the express provisions of the Georgia Constitution giving to the people the right to elect their representatives, and limiting the Legislature in its right to reject such elected members to those grounds which are expressly stated in Georgia's basic document.

As pointed out above, no Georgia decision has held that the courts of this state are helpless to intervene where a House of the Legislature undertakes to disqualify a person on a ground not specified. The decisions thus far reach only the proposition that where the Georgia Constitution authorizes the House to pass upon the qualifications of its members, all of the provisions in the Constitution touching on qualifications may be considered by the House in determining whether a member-elect meets the specified standards. In view of my conclusion that the action of the lower house of the General Assembly was in violation of the State Constitution, it would seem that Article I, Section IV, Paragraph II, would come into play. This section provides: "Legislative Acts in violation of this Constitution, or the Constitution of the United States, are void, and the judiciary shall so declare them." Section 2-402, Ga. Code Ann. Since, therefore, a Georgia court is given the authority to declare such an act void, as in violation of the [fol. 279] Georgia Constitution, pendent jurisdiction places this obligation upon this Court.

While it might be argued that, under normal circumstances, if there were nothing before this Court other than the charge that the State Legislature violated the Georgia Constitution, rules of comity might require that this Court refrain from assuming jurisdiction over such a controversy, this is not such a case. If we were to refrain from acting on the State constitutional question, we would then be faced squarely with the necessity of deciding the grave Federal constitutional question. That question is, whether the plaintiff has been deprived of his First Amendment rights by the action of the Georgia House. The gravity of that question cannot be doubted, since it is clear that it was for expression of his views that Bond was denied his seat. In view of the fact that all of plaintiff's rights can be fully adjudicated by our construction of the Georgia Constitution itself, we need not, and, indeed, we should not, proceed to a consideration of the Federal constitutional issue.

I would find that the act of the Georgia House of Representatives was void as being in violation of the Georgia Constitution and would require that he be seated to the place to which he was elected.

[fol. 280]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action No. 9895

JULIAN BOND, DR. MARTIN LUTHER KING, JR., and MRS. ABEL KEYES, for themselves jointly and severally, and for all other similarly situated, Plaintiffs,

—v.—

JAMES "SLOPPY" FLOYD, WILLIAM J. "BILL" LEE, ED T. FULFORD, J. TERRELL WEBB, W. JONES LANE, and DAVID L. NEWTON, individually and as members of the House of Representatives of the State of Georgia and as Representatives of the class of citizens who are presently serving as members of the House of Representatives of the State of Georgia; GEORGE T. SMITH, individually and as Speaker of the House of Representatives of the State of Georgia and as Chairman of the Rules Committee of the House of Representatives of the State of Georgia and as Chairman of the Challenge Committee appointed to consider the seating of Julian Bond; GLENN W. ELLARD, individually and as Clerk of the House of Representatives of the State of Georgia; MADDOX J. HALL, individually and as Speaker Pro-Tem of the House of Representatives of the State of Georgia; ELMORE C. THRASH, individually and as Messenger of the House of Representatives of the State of Georgia; DAVID PEEPLES, individually and as Doorkeeper of the

[File endorsement omitted]

House of Representatives of the State of Georgia; and BEN W. FORTSON, individually and as Secretary of State of the State of Georgia; and JACK TYSON, individually and as Sheriff of the House of Representatives of the State of Georgia, Defendants.

[fol. 281]

JUDGMENT—Filed and Entered February 16, 1966

On the 17th day of January 1966 a complaint was filed in the United States District Court for the Northern District of Georgia, Atlanta Division, for injunctive relief in the above-styled cause. Pursuant to the prayers of the complaint a Three-Judge District Court was convened, consisting of Honorable Elbert P. Tuttle, Circuit Judge, Griffin B. Bell, Circuit Judge, and Lewis R. Morgan, District Judge. A motion for a preliminary injunction was filed on that same day. Various motions and an answer were filed by the Defendants, and it was stipulated that a final judgment might be rendered on the pleadings, the stipulated facts and such other evidence as was introduced on the hearing of this matter. The Court, having heard oral argument on January 28, 1966, and having entered its opinion with respect thereto on February 10, 1966, and being advised in the premises,

It Is Now, Therefore, Ordered, Adjudged and Decreed as follows:

1.

The motion to dismiss for lack of jurisdiction is denied. The Motion to Strike Plaintiffs Dr. Martin Luther King, Jr., and Mrs. Arel Keyes for Lack of Standing is hereby granted.

2.

The prayers of the complaint are denied for the reasons set forth in the opinion and the complaint is hereby dismissed.

[fol. 282] This 14th day of February 1966.

Griffin B. Bell, United States Circuit Judge.

Lewis R. Morgan, United States District Judge.

I concur in that part of the order denying the motion to dismiss for want of jurisdiction. I dissent from the remainder of the Order.

Elbert P. Tuttle, Circuit Judge.

[fol. 283]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 9895

[Title omitted]

NOTICE OF APPEAL OF JULIAN BOND, ET AL. TO THE SUPREME COURT OF THE UNITED STATES—Filed February 16, 1966

[fol. 284] I

Notice is hereby given that Julian Bond, Dr. Martin Luther King, Jr., and Mrs. Arel Keyes, for themselves jointly and severally, and for all others similarly situated, plaintiffs in the above-entitled civil action, hereby appeal to the Supreme Court of the United States, from the final order dated February 10, 1966, and final judgment entered thereon in this action on February 16, 1966, refusing, and denying to issue a preliminary or permanent injunction enjoining the enforcement, operation, and execution of certain constitutional provisions and statutes of the State of Georgia on the grounds of their facial unconstitutionality

[File endorsement omitted]

and their unconstitutional application and denying all other relief and dismissing their complaint.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II

The Clerk will please prepare a transcript of the record in this action, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Complaint and all exhibits thereto.

B. All motions, answers, and other pleadings which have been filed, including this notice of appeal.

[fol. 285] C. Stipulation of facts with all exhibits attached thereto.

D. Transcript of the proceedings before the Court on January 28, 1966, and the two tape recordings offered and received in evidence in said proceedings.

E. Copy of letter of February 1, 1966, to Honorable Ben W. Fortson from counsel for plaintiff Bond.

F. All orders, opinions, and judgments of the three-judge district court including any exhibits thereto and the dissenting opinion of Chief Judge Elbert P. Tuttle entered February 10, 1966.

G. Affidavit of Leon Hayes offered and received into evidence on January 28, 1966.

III

The following questions are presented by this Appeal:

A. Are Article III, Section IV, paragraph 5 and Article III, Section VII, paragraph 1 of the Constitution of the State of Georgia of 1945 (hereinafter Georgia Constitution) void for vagueness under the First and Fourteenth Amendments of the Constitution of the

United States in that they provide no ascertainable standard by which a legislative aspirant, in Georgia, can guide his conduct?

B. Are Article III, Section IV, paragraph 5 and Article III, Section VII, paragraph 1 of the Georgia Constitution void for vagueness under the First and Fourteenth Amendments of the Constitution of the United States in that they provide no ascertainable standard by which the qualified electors of Georgia and more particularly House District 136 therein can judge the qualifications of an aspirant for membership in the Georgia House of Representatives?

[fol. 286] C. Does the application of Article III, Section IV, paragraph 5 and Article III, Section VII, paragraph 1, of the Georgia Constitution as embodied in Rule 61 of the Georgia House of Representatives and Resolution 19 of the Georgia House of Representatives violate Julian Bond's rights to free speech and association guaranteed him by the First and Fourteenth Amendments of the Constitution of the United States?

D. Does the application of Article III, Section IV, paragraph 5 and Article III, Section VII, paragraph 1, of the Georgia Constitution as embodied in Rule 61 of the Georgia House of Representatives and Resolution 19 of the Georgia House of Representatives deprive Julian Bond of rights guaranteed him by the Due Process Clause of the Fourteenth Amendment in that Resolution 19 was based on no evidence or insufficient evidence of his disqualification to serve as a member of the Georgia House of Representatives?

E. Is Resolution 19 of the Georgia House of Representatives barring Julian Bond from his seat in the Georgia House of Representatives unconstitutional as an *ex post facto* law and bill of attainder (pains and

penalties) under Article I, Section 10, of the Constitution of the United States?

F. Does the application of Article III, Section IV, paragraph 5 and Article III, Section VII, paragraph 1, of the Georgia Constitution as embodied in Rule 61 of the Georgia House of Representatives and Resolution 19 of the Georgia House of Representatives deprive the plaintiffs and the class they represent of the republican form of government guaranteed by Article IV, Section IV of the Constitution of the United States?

[fol. 287] G. Does the application of Article III, Section IV, paragraph 5 and Article III, Section VII, paragraph 1, of the Georgia Constitution as embodied in Rule 61 of the Georgia House of Representatives and Resolution 19 of the Georgia House of Representatives deny the plaintiffs and the class they represent of the right to vote as guaranteed them by the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States and the Fifteenth Amendment of said Constitution?

H. Was Julian Bond denied the procedural Due Process of Law guaranteed him by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States at the hearing of the Special Committee of the Georgia House of Representatives concerning the seating of Representative-elect Julian Bond?

This 16th day of February, 1966.

Respectfully submitted,

Howard Moore, Jr., 859½ Hunter Street, NW, Atlanta, Georgia.

Morris Brown, Healey Building, Atlanta, Georgia.

Of counsel:

Charles Morgan, Jr., 5 Forsyth Street, NW, Atlanta, Georgia.

[fol. 288] Certificate of Service (omitted in printing).

[fol. 289]

In the United States District Court

For the Northern District of Georgia

Atlanta Division

Civil Action Number 9895

Julian Bond, et al., Plaintiffs,

v.

James "Sloppy" Floyd, et al., Defendants.

Transcript of Proceedings—January 28, 1966

Transcript of proceedings had before The Honorable Elbert P. Tuttle, Chief Judge, U. S. Circuit Court of Appeals, The Honorable Griffin B. Bell, Judge, U. S. Circuit Court of Appeals, and The Honorable Lewis R. Morgan, Judge, U. S. District Court, in Atlanta, Fulton County, Georgia, on Friday, January 28, 1966, U. S. District Court Courtroom, commencing at 1:00 o'clock p. m.

Appearances of Counsel:

For the Plaintiffs: Messrs. Howard Moore, Jr., Morris Brown and Charles Morgan.

For the Defendants: Messrs. Arthur K. Bolton, William Harper, Alfred Evans, Peyton Hawes, Jr. and Paul L. Hanes.

* * * * * * * *

[File endorsement omitted]

[fol. 291] Mr. Bolton: Yes, sir. I would like to ask the Court to take judicial notice of certain matters as I think it was agreed at the pre-trial hearing. We would like to ask the Court to take judicial notice of Public Law 88-408 passed by the Eighty-eighth Session of Congress, which was a resolution affirming President Johnson's action in Viet Nam.

We also would like to ask the Court to take judicial notice of the fact that as of today, upon information from the Department of Defense, there were 197,300 men of the U. S. Military Forces stationed in South Viet Nam, that, in addition, there were 70,000 members of the Seventh Fleet Task Force in the Southeast Asia area, that the U. S. Congress for 1965 appropriated for Southeast Asia, Viet Nam in particular, one billion seven hundred million dollars, that there is currently pending before Congress an appropriation of twelve billion seven hundred millions of dollars in emergency funds for Southeast Asia.

Judge Tuttle: We will take all of those facts that you [fol. 292] state to be facts under submission with your request that we give judicial notice to the truth of these facts.

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[fol. 303] Mr. Moore: —there is another stipulation to which the parties have agreed and that is in the event that plaintiff Bond is ordered to be seated, that the State of Georgia will pay his legislative salary for the year 1966.

Judge Bell: We talked about that, too. That was to avoid making the State Treasurer a party.

Mr. Moore: Yes, sir.

Mr. Bolton: That's right.

Judge Bell: That is true, isn't it, Mr. Bolton?

Mr. Bolton: Correct.

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[fol. 404] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 405]

SUPREME COURT OF THE UNITED STATES

No. 1125—October Term, 1965

JULIAN BOND, et al., etc., Appellants,

v.

JAMES "SLOPPY" FLOYD, et al.

ORDER NOTING PROBABLE JURISDICTION—June 20, 1966

Appeal from the United States District Court for the Northern District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

June 20, 1966

Mr. Justice Douglas took no part in the consideration or decision of the question of jurisdiction.